

1896-010 Chancery Causes: J. M. Wheeler vs. C. R. Kesterson &c
Lee Co

Folder 10/2

Colson, Hobbs, Brent, Gibson, Hill, Duncan, Ryan, Roberts,
Risner, Hyatt, Morgan, Susong, Ball, Willis, Haskins,
Morrison, Bull, Boles, Fulkerson

Oversight
Map Cabinet
38-07
- 1 Plat

CA-Estate Dispute
T-Property

-Deed

To the Hon. H. S. K. Morrison Judge of the Circuit
Court of Lee County Virginia.

Humbly Complaining Your Orator James M.
Wheeler Jr. a citizen and resident of the county and State
aforesaid, would respectfully represent, that about the
Month of April 1891, the father of your Orator, viz James M.
Wheeler Sr. departed this life intestate in said county of Lee.

Your Orator states, that beside himself the said James M.
Wheeler left at his death a daughter now the wife of C. R.
Kesterson and he was the father of another daughter to wit
Margaret S. who intermarried with one W. G. Balsam, and
after giving birth to four children she died some time before
her father leaving said four children her heirs at law to wit
Nora Balsam, James Balsam, Verda Balsam and Lela Balsam all
of whom are infants under 21 years of age.

Your Orator further states that himself, said C. R.
Kesterson and the four infant children last above mentioned are
the heirs at law of the said James M. Wheeler Sr. decd.

Your Orator further states that said Wheeler left at his death
a large personal estate, which has been taken charge of by
himself and said C. R. Kesterson as administrators of said
James M. Wheeler Sr. and this personal estate, is largely more
than sufficient to pay all debts and charges against said estate
and to equalize the heirs, if any inequality in the way of ad-
vances - in - should exist.

Your Orator now states, that at the time of his death the
said James M. Wheeler Sr. was the owner of a large & valuable
real estate lying in the west end of said county of Lee and
in the neighbourhood of Walnut Hill consisting of a number
of smaller tracts, some of which adjoin each other, while others
do not so adjoin, but lie separate and apart from others, and
the number of acres in each tract, or the entire quantity which
he owned your Orator cannot now state with any thing like
certainty, but he will try to mention the names of

of the principal tracts or parcels and they are as follows. First The old Home place. 2nd. The Willis tract, 3rd. The Coab tract Ely tract, 4th The Brit Burdett tract, 5. The Blue Braittain tract 6 the David Chadwell, or L. D. Fickerson tract 7th the Alexander, or Brig Chadwell tract, 8th the Bount tract, 9th the Bill Colson tract, 10th the James B. Colson tract, 11th the Henry Colson tract, 12th the Sally arse Colson tract, and 13th about 4 acres of land on which is situated a valuable water Grist and Saw Mill, and there may be some other small tracts or parcels not here named. *

Your Orator states that these several tracts of land, with any other or others that said J^r M^r Wheeler owned in his life, at his death descended and passed in fee simple to his heirs at law before named. To wit One third thereof to your Orator, a like third to Mallie Kesterson wife of C. R. Kesterson, and a like third to the four infant children of said Margaret S. Colson deceased before mentioned. These lands are not encumbered by claim because the wife of said Wheeler died many years before him.

Your Orator states that said lands are in an undivided condition, and he is advised that he is entitled at the hands of a court of equity to have the same partitioned among his heirs according to the rights of the parties interested, and to attain that end is the object of this bill.

The premises considered, your Orator prays that the said Clinton R. Kesterson Mallie E. Kesterson Nora Colson James Colson, Verda Colson and Sela Colson ^{and Moses S. Bull} be made defendants to this bill and be required to answer the same fully on oath, that a guardian ad litem be appointed for said four infants to defend their interest in this cause, and upon hearing thereof a decree be entered therein ordering a partition of said lands, and commissioners appointed to make the same. And if in anywise mistaken in this his Special prayer, then Your Orator prays for all general relief, May the Commonwealth writ of Habeas corpus be directed &c.

Henry J. Morgan Solicitor.

* Your Orator states that beside the several tracts above referred to, which belonged to the said James M. Wheeler in his own right. He and one M. S. Ball were the joint owners of three small tracts of land, which had not been partitioned between them in the lifetime of the said Wheeler. One of these is known as the Stephen Pace tract, containing about 36 acres, lying near Bonaparte on Martins creek, and another tract known as the Calaway Wilson tract, containing 21 acres, lying on the dry Branch. And one other tract known as the Calvin Chadwell tract lying on the Chocoma ridge near the Big Chadwell land.

Your Orator states that one undivided of these three pieces of land belong to the heirs of said James M. Wheeler deceased and that your Orator is entitled to have the same partitioned between the heirs of said J. M. Wheeler deceased and said M. S. Ball and when so partitioned, the parcels are added to the land said Wheeler, again partitioned and ~~added~~ divided among the heirs of said Wheeler, along with the other land.

Commas.

I M. L. Lammick

M. S. Ball

Wm. R. Sales,

Wm. Hoskins

L. D. Fulkerson

C 26.04
S 2.50
H.A.L 5.00
A 15.00
James 179.52
C.C. 12.00

James M. Wheeler

vs. $\frac{1}{3}$ Bill for Partition

C.R. Heston & wife & al

1871. 1st Nov. Rules filed, 3pa. accepted
by admet. debts and
dis. G. & A. filed & Dis.
on Nov. Rules D. No.
Confirmed at
Court set for hearing
by Plaintiff
1st Term Decree for
partition & costs
1872. March & Apr. 3rd
1st Term Decree final
See Chas. O. R.
1872. June
15th 1872

J. A. S. H. J.

Refert. Plat & Recd
See Decd Book 27

P. 182 to 195 Inclusive

J. R. Silsby

1. To the Honorable H.S.K. Morrison, Judge of the Circuit Court
2. of Lee County, Virginia:

3. Humbly complaining, your orator, James M. Wheeler, a citizen
4. of said County, would respectfully represent and show unto your
5. honor,

6. That on the day of 1891, his father, James
7. M. Wheeler, Sr., departed this life intestate leaving a large and
8. valuable real and personal estate situated in the said County:
9. that afterwards, to wit, on the day of 1891, let-
10. ters of administration on said estate were granted to your ora-
11. tor and one C.R. Kesterson.

12. Your orator will further show unto your honor, that the
13. said James M. Wheeler, Sr., had three children, to wit, Mollie
14. who intermarried with C.R. Kesterson ~~X~~ Margaret who intermarried
15. with W.G. Colson, and your orator. The said Margaret departed
16. this life some time before her father, the said James M. Wheeler
17. Sr., leaving surviving her four children, to wit, Nora, James, Ver-
18. die and Lelia Colson, all of whom are infants under the age of
19. twenty-one years. These four children of Margaret Colson, the
20. said Mollie Kesterson and your orator constitute the heirs of
21. the said James M. Wheeler, Sr., dec'd, to whom his estate, both re-
22. al and personal, descended.

23. Your orator will now show your honor that the real estate
24. of the said James M. Wheeler, Sr., deceased, has been partitioned
25. among his said heirs, and his said administrators have gone for-
26. ward to a great extent in the discharge of their duties as such.

27. Your orator will now show your honor that the said James M.
28. Wheeler, Sr., in his lifetime, made large and valuable advance-
29. ments to his two daughters, as follows: to the said Mollie Kes-
30. terson, the sum of \$2400.00; to the said Margaret Colson, in her
31. lifetime, the sum of \$5500.00 as follows, to wit, \$1000.00 in
32. cash on the 9th day of February, 1883, \$300.00 in cash on the
33. 20th day of April 1883, \$4000.00 paid into a tract of land pur-
34. chased from D.K. Young and wife, the nature of which purchase

35. was that the said James M. Wheeler, Sr. and W.G. Colson purchased
36. from the said D.K. Young and wife the Woodson tract of land, sit-
37. uated on Station Creek, in Lee County, Virginia, for the sum of
38. \$8000.00, one half of which, to wit, the sum of \$4000.00, was
39. paid by said Wheeler as an advancement to his daughter, Marga-
40. ret, the said Colson's wife, and said tract of land was convey-
41. ed accordingly, the remaining \$200.00 was received by the said
42. W.G. Colson, the husband of the said Margaret Colson, during the
43. years of 1888 and 1889, and were intended by the said James M.
44. Wheeler, Sr., as an advancement to his said daughter, Margaret.
45. During the lifetime of the said James M. Wheeler, Sr., deceased, no
46. advancements were made by him to your orator.

47. Your orator will now further show your honor, that since ~~the~~
48. the death of the said James M. Wheeler, Sr., Mollie Kesterson has
49. has received from the administrators of his estate the sum of
50. \$3010.25, as follows, to wit, \$2000.00 on the 15th day of May 18-
51. 91 and \$1010.25 on the 1st day of March 1892. Your orator has
52. received from the administrators of said estate the sum of
53. \$6782.35 as follows, to wit, \$500.00 on the 1st day of June 18-
54. 91, \$500.00 on the 10th day of June 1891, \$500.00 on the day
55. of April 1892, \$2297.56 on the 16th day of November 1891, \$618-
56. 88 on the 1st day of May 1892, 225.00 on the 16th day of May
57. 1892, \$1829.03 on the 11th day of June 1892, \$250.00 on the 11th
58. day of June 1892, and 61.88 on the 11th day of June, 1892.

59. Your orator will now further show your honor that he and
60. his co-administrator the said C.R. Kesterson have at various
61. times attempted to settle the matter of advancements made by
62. the said James M. Wheeler, Sr., in his lifetime, to his daughter,
63. the said Margaret, and her husband, the said W.G. Colson, with
64. the father and guardian of the infant children of the said Mar-
65. garet Colson, deceased, but have been unable to get said settle-
66. ment made: and that said administrators are now getting the
67. said estate into a situation to make a final settlement of it
68. at an early day, but are unable to make said final settlement
69. until

69. until the subject of advancements is fully settled and the a-
70. mounts necessary to equalize the same ascertained, and being
71. without adequate remedy at law, and properly relievable only in
72. a court of equity, he prays your honor's court of chancery to
73. take cognisance of his cause and grant him proper relief.

74. To this end he prays that C.R. Kesterson and Mollie Kester-
75. son his wife, Nora Colson, James Colson, Verdie Colson, and Le-
76. lia Colson and W.G. Colson (late guardian of his infant children)
77. be made the parties defendant to this bill; that they each be
78. required to answer the same and the several allegations thereof
79. as fully as if said allegations were here again repeated by way
80. of interrogatories, but they need not answer on oath, that be-
81. ing waived; that a guardian ad litem be appointed and required
82. to answer for said infants; that a commissioner be appointed to
83. ascertain the amount of advancements made by the said James M.
84. Wheeler, Sr., in his lifetime, to each one of his children, the
85. amounts that have been paid by his administrators since his
86. death to each of said distributees; and the amounts necessary
87. to equalize said distributees; and that such decrees be pro-
88. nounced as will legally adjust said advancements and distribu-
89. tions, and for full general relief. May Spa. issue &c.

Amos V. Hyatt, p.c.

1st Feb 24 B. 1894

James M. Wheeler.

vs. Bill in Chancery.

C.R. Kesterson et als.

Duncan & Hyatt, p. q.

1894 1st Febury Rules

Bill filed 3rd & 4th

on direct Defts & D. V. in

as to them Ans & L.

filed for Defunct Defts

" 2nd Febury Rules d. V. in

caused & cause set

for hearing by Jff

" March Term Contd

" June Term Contd

" Novr Term Contd

1895 March Term Decree & Contd

" June Term Decree final

See Chcy order Book

Page 233.

Plffs Costs

C 7.59

Sheriff 2.50

Comm 105.00

\$114.09

Wits 16.30

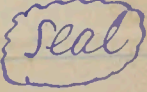
\$130.39

Defts Costs

C 1.25

Atty 151.00

Wits 4.84

One day after date I promise to pay
J. M. Wheeler, Sen., "One Thousand Dollars"
(\$1000) For value received. This note is executed
to J. M. Wheeler, Sen., to procure money to pay
Huston Collins so much of the purchase money on
a farm which I purchased of said Collins
on Yellow Creek, Bell Co., Ky, on Jan 1st 1883
and I agree that this note shall be a lien
on said land to J. M. Wheeler for that amt.
This Feb. 9th 1883, W. G. Clemen 

6

Mr. S. Calson
to make
\$10000

To the Honorable W.T. Miller, Judge of the Circuit Court of Lee County Virginia:

Your orator, James M. Wheeler, humbly complaining, sheweth unto your honor that at Rules held in the Clerk's office of the Circuit Court of Lee County, on the _____ day of _____ 18-9__, he exhibited his bill in chancery against C.R. Kesterson and Mollie, his wife, W.G. Colson and James, Nora, Lelia, and Verdie Colson, heirs at law of Margaret Colson, deceased, the object and purpose of which was to settle and have adjusted and equalized advancements made by James M. Wheeler, in his lifetime, to his children. The adult complainants answered said bill, ~~xxx~~ and the infants by a guardian ad litem, the said C.R. Kesterson and Mollie, his wife, admitting that the said J.M. Wheeler, in his lifetime had advanced his daughter, the said Mollie Kesterson the sum of twenty-four hundred dollars; that said W.G. Colson by his answer denying that any advancements had been made to the said Margaret or her children, and further setting up that for the sum advanced by the said Wheeler, towards payment for the Woodson land which had been conveyed to the extent of the sum so advanced to said ~~x~~ infant heirs of the said Margaret Colson, had been settled between himself and the said J.M. Wheeler in the lifetime of the latter, and filed as evidence of said allegation a paper, dated on the 8th day of January 1891, purporting to be a deed made by the said J.M. Wheeler to him, the said W.G. Colson for certain lands, situated in the State of Kentucky, and in which deed the said J.M. Wheeler purported to reserve certain lands therein mentioned in the payment of a one thousand dollar note and the amount paid by the said Wheeler to D.K. Young on the Woodson land in Virginia. The said infants by their guardian ad litem filed their answer adopting as a part thereof the answer of the said W.G. Colson, aforesaid, to all of which answers your orator replied generally, and issue having been thus duly joined upon said bill and answers, all matters and things were submitted to H.A.W. Skeen, who was appointed a commissioner for the purpose and ordered among other things to ascertain and report the amount of advancements made by the said J.M. Wheeler in his life.

his lifetime to his said children or either one of them. Said commissioner heard all the proofs introduced by the parties, reduced the same to writing, made and filed his report, to which exceptions were filed by the said W.G.Colson and the guardian ad litem for said infants, and thereupon the following decree was entered; affecting said question of advancements: "the court is further of opinion that the one thousand dollars received by W.G.Colson from James M.Wheeler, Sr. never did constitute an advancement to Mrs.Margaret Colson, and that the commissioner erred in reporting it as such, The court is further of opinion that while the evidence shows that the four thousand dollars paid by J.M.Wheeler, Sr. on the land conveyed by D.K.Young and wife to W.G.Colson and his children was intended as an advancement, yet exhibit "X" filed with the deposition of Richard Risner shows that said four thousand dollars as well as the one thousand dollars were repaid by said W.G.Colson to said Wheeler, in the lifetime of the latter, and he having accepted the Kentucky lands in repayment of said sums, his heirs are not now entitled to have said amounts or either of them treated as advancements to Mrs.Colson or her infant children: It is therefore adjudged ordered and decreed, that the exceptions of said Colson guardian ad litem for said infants be sustained on this point, ...and that said infant defendants recover their costs in defending this suit for which execution may issue."

~~Which said decree your Orator insists is erroneous because of errors on the face thereof in this, that the Court gave by its decree the Court gave costs against your Orator which should not have been done, as the suit was to settle advancements, and by the proceedings had this was done and your orator substantially prevailed and should not have been required to pay the costs.~~

~~2nd: Because, the evidence clearly shows that the \$4000.00 paid by James M.Wheeler into the Woodson land was intended as an advance, and the Court so finds, and no device arrangement or contrivance had between the said Wheeler and the father of said infants could change or alter the consummated advancement made by Mr Wheeler in his lifetime, by paying the money into the land~~

and by procuring the deed by D.K.Young and wife to be made to them for an amount of said land equal to that which he had paid into it. This proposition is more clearly evinced by the fact that said Wheeler and said Colson both treated \$4000.00 worth of said land as the land of Margaret Colson in her life time because the said D.K.Young and wife deed gives to the said Colson curtesy in this land, thus treating it as hers and in ~~in~~ her possession before her death. And the proposed arrangement by the supposed deed of January the 8th 1891 undertakes which the court confirmed by its decree reverses this consummated arrangement, and makes the father of these children and not the grandfather their donor.

And because of evidence not in the cause which has been discovered since said decree, and which ~~XXXXXXXXXXXXXXXXXXXX~~ could not have been discovered before the same by any diligence on your orator's part and which is not cumulative, which is as follows, to wit: Your orator has discovered that the said W.G.Colson, at the date of the deed by himself to Catherine Colson did not own, never before owned, and never afterwards owned, the tract of land described in said deed of the 8th of January 1891 as the William Turner tract of land on Bean's Fork of Yellow Creek. This tract of land was granted by the Commonwealth of Kentucky, by patent, dated on the 3rd day of June 1869, ~~XXXX~~ ~~XXXXXXXXXXXXXXXXXXXX~~ to William Turner, and was by the said William Turner, by deed duly acknowledged and recorded on the 29th day of May 1876, conveyed to John C.Colson, father of the said W.G.Colson, as will more fully appear by a copy from Deed Book No.1.page 606 in the Clerk's office of Bell County, Kentucky, which will be filed herewith, if required. On the 23rd day of April 1884 J.C.Colson,Jr.and W.G.Colson, Exrs.of J.C.Colson, Sr., deceased, conveyed, by deed duly executed, said William Turner tract of land, to J.C.Turner and Job Marsee. This deed was duly admitted to record on the 5th day of March 1885 in Deed Book No.4.page 116, in the Clerk's office of Bell County, Kentucky. On the 10th day of December 1886, by deed duly acknowledged and recorded in deed Book No.6.page 96 Job

Mars ee conveyed his undivided interest in the said tract of a land to J.C.Turner. And on the 1st day of March 1887, by deed duly acknowledged on the 21st day of March 1887 and recorded in Deed Book No.6.page 279, the said J.C.Turner, then the owner of the entirety of said William Turner tract conveyed the same to Alexander A.Arthur, who was then acting as agent and trustee n for the American Association, limited, a corporation doing business in the State of Kentucky, and put him, the said Authur, in the possession of said land, and the said Arthur and the American Association limited have been in the open, notorious and uninterrupted possession of the said tract of land even since the acknowledgement of said deed.

And that the tract called in said deed the J.M.Wheeler ~~tract~~ tract was patented to J.M.Wheeler for the benefit of W.G.Colson on the 13th day of ~~January 1888~~ 1885, and was on the 13th day of January 1888, released and quitclaimed by deed to the said W.G.Colson. This tract of land was, at the date of the deed of W.G.Colson to Catherine Colson, of Catherine Colsonx to J.M.Wheeler, and ever since, was and has been in the possession of the American Association, Limited, under title paramount to the of the said Colson and Wheeler, with the exception of from 15 to 25 acres.

The J.M.Gibson tract was on the 12th day of May 1887 conveyed to W.G.Colson and described as containing 200 acres. This tract of land was patented to the said Gibson on the 30th day of May 1885. At the time of the conveyances aforesaid to the said Catherine Colson and by the said Catherine to James M. Wheeler, and by the said Wheeler back to the said Colson was to the extent of one half thereof held by the American Association limited, by older and paramount title. So that it readily appears that, on the 8th day of January 1891, the date of the deed from Wheeler to Colson there was not more than 125 acres of land to which there is any semblance of title, reserved by the said Wheeler: That by deed dated the 1st day of September 1890, the said W.G.Colson in consideration of ten thousand dollars cash in hand paid the receipt of which is acknowledged the said Col

son conveyed to J.M.Wheeler all the lands owned by him, the said Colson in Bell County, Kentucky. This deed was acknowledged by the said Colson in the Clerk's Office of Bell County Kentucky and admitted to record on the 10th day of April 1891. It was admitted to record at the direction of the said Colson. This acknowledgment and recordation was three days after the death of the said J.M.Wheeler.

All this information has come to the knowledge of your orator of your orator since the rendition of said decree, and there was no means by which he could have discovered the same prior thereto, except by going to the records of Bell County, Kentucky, and he had no suspicion nor no intimation whatever that these lands were held by the paramount title of others until since said decree was entered. It will be noticed from the above that the patents to the Gibson's and J.M.Wheeler tracts were only granted in the year 1885, and the fact that these lands were held by paramount title was perhaps unknown either to the said W.G.Colson or the said J.M.Wheeler. The evidence shows that J.M.Wheeler never had any beneficial interest in these lands, his connection therewith only being to aid Mr.Colson in holding them, so as to satisfy his debts without a sacrifice. The William Turner 200 acre tract was clearly a mistake on the part of the said W.G.Colson. He was the draft man of said deed; Mr.Wheeler knew nothing about it, and it is clearly error to hold him responsible for the same, it clearly appearing from the deed of W.G.Colson to Catherine Colson, and by Catherine Colson to J.M.Wheeler that no such land was ever conveyed ~~by~~ to Mr.Wheeler, and to reserve that which he never had, that reservation being written in for him by W.G.Colson who he supposed knew all about it, and who clearly made a mistake, ought not in any way to prejudice the said Wheeler's rights or his children under him.

To the Honorable W. S. Miller Judge of
the Circuit Court for Lee County
Virginia:

The answer of W. G. Coleman
to a bill of review filed by James
M. Wheeler against him and others,
in the Chancery cause of James
M. Wheeler against C. B. Masterson
et al, lately decided in said Court and
afterwards decided in the Court
of Appeals the same as decided
by said Circuit Court,

Respondent says that said bill
of review is not sufficient
in law, but should further
answer be required, answering
he says:

That he answers herein as he
did in his former answer
to the bill of the plaintiff in
the original Cause of James M.
Wheeler against C. B. Masterson
et al and that as to the proceedings
in said last-named Cause as set out
in this bill of review, he supposes
are correct, but denies the right
of the plaintiff to bind him by
his allegations of advancements
which he seeks to try to make
against him.

Respondent says in answer
to the allegations of after-discovery

1 evidence as set out in said
2 bill of review, he says that as to
3 the William Turner tract of land on
4 Bear's Fork of Yellowstone Creek
5 in Bece County, Nevada, he
6 was not the legal title holder
7 neither before nor after the
8 date of his deed to Catharine
9 Colson, as shown by the
10 said records.

11 Respondent further says that
12 as to the other two tracts
13 of land referred to in said bill
14 of review, to-wit: The J. M.
15 Wheeler tract of land, and
16 J. M. Gibson tract of land, he
17 denies that either the American
18 Association, or anyone else
19 holds paramount title there
20 to; and he denies the other allegations
21 of said bill of review as to said
22 after discovered evidence,
23 but admits that any references
24 in the deed from W. S. Colson to
25 Catharine Colson and from
26 her to J. M. Wheeler & Co., or from
27 W. S. Colson to J. M. Wheeler & Co.
28 in regard to the said Wm Turner
29 tract of land were by mistake.
30 Your Respondent further states
31 that he is informed that the
32 personal representatives of

J. M. Wheeler deceased offers to pay the four infant children of Margaret Olson deceased, to wit: Nora, Jayus M. Berdie, and Lilia Olson the sum of four thousand dollars out of the personal estate of J. M. Wheeler deceased, as their distributive part of said personalty putting it upon the basis of twelve thousand dollars, to be paid as follows: Two hundred dollars each to B. N. Hume attorney for their guardian and litigation for services in the original cause and in this cause, and sixteen hundred dollars each to said infants, and ^{the said heirs of said J. M. Wheeler} to said ^{infants} ^{interests} them the tract of land situated in Bell County Kentucky, known as the John Bonnet tract of land, and their interests in what is known as the J. M. Gibson tract, the William Turner tract of land, and the J. M. Wheeler tract of land, all situated in Bell County Kentucky, and if there is any more than twelve thousand dollars of said personal estate of said decedent, after

1 a proper and legal administra
2 tion of said estate, then said
3 infants are to have their
4 pro rata part thereof
5 Your respondent says, without
6 waiving any of the rights of
7 said infants herein, he thinks
8 this settlement would subvert
9 the ~~interests~~ of said infants,
10 And now having fully
11 answered, Respondent
12 prays he be here dismissed
13 with his costs in this behalf
14 expended, And he will ever
15 pray etc. H. S. Colman.

By counsel

W. G. Colman,

Ad. Ex. Answerer

James M. Whelan

To the Hon H.S.K. Merison Judge of the Circuit
Court of Lee County Virginia:

The answer of Vera Balsam James Balsam, Vera
Balsam and Lela Balsam by John M. Morgan their guardian
ad Litem, to a bill filed in said court against said infants
and others by James M. Wheeler for

For answer to said bill or so much thereof, as he deems
it material for him to answer. Respondent answering says
that his said wards are young and of tender years, and
being infants are the peculiar wards of courts of equity, their
interest therefore in this suit is committed to your Honor's
care and protection:

Respondent says that, neither his said wards or any
one else ^{has} given him any fact or any circumstance
relating to the subject of the suit, which he ought to
state or allege in delay of the Plaintiffs right to have
the partition which he seeks, but on the contrary
Respondent would think that the interest of his said
wards would be promoted by such partition, for when
that is done, their part of said lands may be bringing
them something in the way of rents and profits

Respondent having now answered as fully as deemed
material prays that his said wards be hence dismissed
with their costs.

Jno M. Morgan
Guard ad Litem

Nira Balsam & others

ad. } Answer by G. A. L.

James M. Wheeler for
Filed 1st Nov. Rules 1891.

J. A. S. Stuyt &

To the Honorable W. S. Miller
Judge of the Circuit Court for
Lee County Virginia;

The separate answers of
Mora, James M. Verdier, and
Lelia Balsam, infants under
the age of twenty one years,
by W. G. Balsam their guardian
ad litem, assigned & filed
them in this suit, & a bill of
review exhibited against them
and others in the Circuit Court
for Lee County Virginia, by James
M. Wheeler.

The respondent reserving & their
selves the benefit of all just exceptions
to said bill, for answers thereto,
or so much thereof as they are
vised that it is material they
should answer, by their said
guardian ad litem, answer and
say: -

That they are infants of tender
years, and by reason of their
infancy are incapable of under-
standing, or taking care of
their rights and interests. They
therefore, by their said guardian
commend themselves and their
rights and interests to the protec-
tion of the Court, and pray that
no decree may be pronounced

which will tend to their prejudice
And having fully answered the
said respondents pray & be
hence dismissed with their
reasonable costs in this
behalf expended, and they will
answer pray etc.

W. G. Colson.

Guardian ad litem for
Hova James M. Verdie and
Leticia Colson.

Virginia, Lee County to-wit:-

This day personally appeared before
me, D. P. Sewell a notary Public
for the county & state W. G. Colson &
made oath that the facts contained
in the foregoing answer is true to
the best of his knowledge & belief.
Given under my hand, this 10th
day of March 1896.

D. P. Sewell N. P.

J. M. Wheeler, Peff,

vs.

C. R. Kesterson &

Margaret S. Colmdee
heirs -

Answer of Nora James
M. Underhela by
Guardian Ad Litem

1 To the Honorable H. S. K. Morrison Judge
2 of the Circuit Court for Lee County Vir-
3 ginia:

4 The separate demurrer and answer
5 of W. G. Colson to a bill of complaint
6 exhibited against him and others
7 in the Circuit Court for Lee County
8 Virginia, by James M. Wheeler.

9 Respondent says that said bill
10 of complaint is not sufficient
11 in law, and he demurs thereto,
12 accordingly, and not waiving
13 said demurrer, but relying and
14 insisting thereon, should further
15 answer be required of him,
16 he makes the following answer
17 to said bill:

18 Respondent says it is true that
19 James M. Wheeler Sr departed this
20 life intestate sometime in the
21 year 1891, leaving a large and
22 valuable real and personal estate
23 situated in said County; and
24 that he supposes that letters of ad-
25 ministration were granted on the
26 date mentioned in said bill to
27 the said James M. Wheeler and
28 C. R. Kesterson on said estate; and
29 that it is true that the said James
30 M. Wheeler Sr had three children,
31 Louie, Mallie, who intermarried with
32 C. R. Kesterson, Margaret, who intermar-

1 ned with your respondent, W. G.
2 Colson, and James M. Wheeler;
3 and that the said Margaret, de^{pt}
4 ed this life before her father James
5 M. Wheeler Sr, leaving surviving
6 her four children, Towit, Nora,
7 James, Verdie, and Lelia Colson,
8 all of whom are infants under
9 the age of twenty one years; and
10 that these four children of the said
11 Margaret Colson, the said Mollie
12 Kesterson, and the said James M.
13 Wheeler constitute the heirs of the
14 said James M. Wheeler Sr deceased,
15 to whom his estate, both real and
16 personal, descended.

17 Respondent says that it is true
18 that the real estate, of the said
19 James M. Wheeler Sr deceased, has
20 been portioned among his said
21 heirs, that is situated in Lee County
22 Virginia, but this portion was greatly
23 to the prejudice of the said heirs of
24 Margaret Colson deceased,

25 Respondent here states that the real
26 estate owned by the said James M.
27 Wheeler Sr deceased, at the time of
28 his death, situated in the County of
29 Bell, in the State of Kentucky, has
30 never been portioned among his said
31 heirs.

32 Respondent will again herein

1 after refer to the portion of the
2 real estate of the said James
3 M. Wheeler Sr deceased, among
4 his said heirs,

5 Respondent says that it is true that
6 the said James M. Wheeler Sr,
7 in his life time, made large and
8 valuable advancements to his
9 daughter Mollie Weston, and
10 here charges and alleges that the
11 advancements so made to her
12 are largely in excess of the sum
13 of \$2400⁰⁰, as stated in said bill.

14 Respondent here charges and
15 alleges that the said Mollie
16 Weston received the follow
17 ing advancements from her
18 father James M. Wheeler Sr,
19 in his lifetime.

20 On the day of 18 the sum
21 of \$1500⁰⁰ in cash; and the rents
22 of the house place, where
23 the plaintiff now lives, for and
24 during the period of five years,
25 for which she and her husband
26 the said C. R. Weston, were to
27 pay \$700⁰⁰ per annum, making
28 a total of \$3500⁰⁰ of rents, which
29 they failed and refused to pay
30 as per their contract, and should
31 now be treated as an advance
32 ment to the said Mollie Weston.

1 Respondent denies that he or his said
2 wife Margaret Colson, received
3 from the said James M. Wheeler
4 Sr, in his life time, the sum of \$5500⁰⁰
5 as an advancement as charged in
6 said bill.

7 Respondent says it is true that he
8 received \$1000⁰⁰, on the 9th day of
9 February 1883, and for which he
10 executed his individual note
11 to the said James M. Wheeler Sr, but
12 denies that he received it as an
13 advancement, and here charges
14 and alleges that it was a loan
15 to him as an individual of said
16 sum, and for which he has duly
17 accounted for to the said James M.
18 Wheeler Sr in his life time,

19 Respondent says it is true that the said
20 James M. Wheeler Sr paid \$4000⁰⁰ into
21 the farm purchased by him and
22 said Wheeler from D.K. Young, but
23 denies that the said Wheeler made
24 this sum as an advancement to
25 him or his said wife, and for this
26 \$4000⁰⁰ your respondent here charges
27 and alleges that he has duly
28 accounted for to the said James M.
29 Wheeler Sr, in his life time.

30 Respondent will here show your
31 honor that for said \$1000⁰⁰, and
32 for the said \$4000⁰⁰, he has duly

1 accounted for to the said James
2 M. Wheeler Sr, in his life time, and
3 here charges and alleges that he accounted
4 to him for the same in the following
5 way: That on the day of
6 18 under an agreement with the
7 said James M. Wheeler Sr, your
8 respondent conveyed by deed to
9 the said Wheeler a large tract
10 of land situated in Bell County
11 Kentucky, and that afterwards,
12 to wit, on the day of
13 18 the said James M. Wheeler
14 Sr reconveyed said land
15 to your respondent, reserving
16 a sufficient quantity thereof
17 to pay him for the said sum
18 of \$1000⁰⁰, and for the said sum
19 of \$4000⁰⁰. Copies of said deeds
20 will be filed herewith marked
21 "A" & "B" and prayed to be consider
22 ed as part hereof.

23 Respondent denies that he or his
24 wife ever received from the
25 said James M. Wheeler Sr, in his
26 life time, the said two sums
27 of \$300⁰⁰, and \$200⁰⁰, by way of
28 advancements or otherwise.

29 Respondent does not know
30 whether the said James M. Wheeler
31 the complainant ever received
32 any advancements from his father

1 in his life time, or not, but here charges
2 that he was in possession of what is known
3 as the Ely land, where he lived before
4 the death of his father, for the period of
5 five years, and the rents of which,
6 the said James M. Wheeler accounted
7 for to the Ely estate, and respondent
8 charges that this rent so paid was
9 in the nature of an advancement
10 to the complainant, and for which
11 he is properly chargeable to his
12 father's estate, and respondent charges
13 that said complainant is properly
14 chargeable for two years rent
15 for the house place prior to the
16 death of the said James M. Wheeler.
17 Respondent says that he does
18 not know how much the said
19 Mallie Westerson has received
20 from the administrators of
21 said estate, but charges that the
22 sum received by her from them
23 is largely in excess of \$3010 $\frac{25}{100}$,
24 Respondent says that he does not
25 know how much said complainant
26 has received from said administrators
27 but charges that the sum so received
28 by him is largely in excess of \$6782 $\frac{35}{100}$,
29 and calls for proof of the exact amount
30 received by them from said adminis-
31 trators.

32 Respondent here states that the

1 said heirs of Margaret Colson dead
2 has never received one cent from
3 the estate of James M. Wheeler Sr
4 deceased.

5 Respondent deems that he ~~is~~
6 guardian of the said infants
7 of the said Margaret Colson
8 deceased, or in any way, ever
9 attempted to settle with said
10 administrators any question
11 of advancements to him or his
12 said wife, and deems that there
13 were any such advancements
14 to be settled for.

15 But respondent further an-
16 swering says that if the matters
17 and things herein before stated
18 are not sufficient, he says that
19 at the 1st November Rules 1891, the
20 plaintiff in this cause, as an
21 heir of the estate of James M.
22 Wheeler Sr deceased, filed his
23 bill in this honorable court
24 for partitioning the real estate
25 of the said James M. Wheeler Sr
26 deceased; In that bill among
27 other things he alleged;

28 "Your Orator further states that
29 said Wheeler left at his death a
30 large personal estate, which
31 has been taken charge of by himself
32 and said C. R. Westerson, as administra

1 tons of said James M. Wheeler & Co., and
2 his personal estate is largely more
3 than sufficient to pay all debts
4 and charges against said estate,
5 and equalize the heirs, if any
6 inequality in the way of advances
7 made should exist."

8 By reference to which it will be
9 seen that in that cause, the question
10 of advancements were alluded to,
11 were within the jurisdiction of the
12 Court, were properly made therein,
13 and in that cause the parties were the
14 same as in this cause. The question
15 of advancements, thereupon, was
16 properly before the Court, and should
17 have been then and there settled,
18 your respondent is advised that
19 the law is, that a party cannot
20 split up his demand and
21 have two suits for the same
22 cause of action, and if he
23 does so, as your respondent
24 alleges has been done in that
25 cause, he is advised that such
26 failure to settle it as aforesaid,
27 is in law taken to be an
28 abandonment and a waiver
29 of all things not therein settled,
30 and respondent alleges that the
31 advancements and matters and
32 things in the plaintiffs bill

1 contained have been adju-
2 dicated, settled, or insured and
3 abandoned,

4 And now having answered
5 as fully as he is advised it is
6 material, your respondent
7 prays to be hence dismissed
8 with his reasonable costs
9 in this behalf expended,
10 And he will ever pray etc,

11 H. Gleason,

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13 B. H. Sewell,
14 Atty for Respondent,
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1 This answer or that part of it contained in lines
 2 22, 23, & 24 on page 2. is expected to be some
 3 constitutional defence and wholly improper to be
 4 brought into this case.
 5 That part of said answer in lines 25 to 31 ^{to 31} ^{to 31} ^{to 31}
 6 inclusive are expected for some reasons above
 7 assigned
 8 Said answer as contained from line 15, ^{on page 7} to the end
 9 of said page, all of page 8 and lines 1 to 3 in
 10 clusive on page 9 is expected to be some not
 11 responsive to the bill and ~~any~~ legal defence
 12 thereto.
 13 Said answer is further expected to be some
 14 said respondent fails to answer whether or not said
 15 tract of land sold by D K Gung and wife to him and
 16 whether was not conveyed as an advancement
 17 See allegation of bill Page 2. lines 35 to 40
 18 inclusive I am Whelan by
 19 Lawrence & Hyatt attys

W. G. Carlson,
 Attorney
 Ass. Atty.

James M. Wheeler
 Filed in open court March the
 14th 1894 J. B. Munsey clerk

(2)

1 To the Honorable H. S. H. Morrison Judge
2 of the Circuit-Court for Lee County
3 Virginia:

4 The joint answer of Nora
5 Colson, James Colson, Ferdie Col
6 son, and Lelia Colson, infants
7 under the age of twenty one
8 years, by H. S. Colson their guar
9 dian ad litem assigned to defend
10 them in this suit, to a bill of
11 Complaint exhibited against them
12 and others in the Circuit-Court
13 for Lee County Virginia, by
14 James M. Wheeler.

15 Respondent reserving to himself
16 the benefit of all just exceptions
17 to said bill for answer there
18 to, or to some of thereof as
19 they are advised it is insisted
20 ~~they~~ should answer by their
21 said guardian ad litem,
22 answering say:

23 That they are infants of tender
24 years and by reason of their
25 infancy are incapable of
26 understanding or taking
27 care of their rights and
28 interests, They therefore by their
29 said guardian commends
30 themselves and their rights
31 and interests to the protec
32 tion of the Court, and pray

1 that no decree may be pro
2 nounced which will tend
3 to their prejudice.

4 Respondents state that their
5 Co-defendant W.G. Bolson has
6 answered said bill, and they
7 by their said guardian hereby
8 adopt ~~the~~ said answer so far as
9 it is material for their defence
10 in said suit.

11 Respondents by their said guardian
12 deny the right of the complain
13 ant to charge them with the
14 so called advancements
15 mentioned in said bill, and
16 deny that they or any one
17 for them ever received
18 said so-called advancements,
19 and here assert and allege
20 their right to an equal dis
21 tribution of said estate.

22 And now having fully answer
23 ed, the said respondents
24 pray to be hence dismissed
25 with their reasonable costs
26 in this behalf expended, and
27 they will ever pray etc,

28 W.G. Bolson

29 Guardian ad litem for
30 Aona, James, Ferdinand and Lelia Bolson
31
32

1 Virginia Lee County to wit:

2 This day personally appeared before me ^{W. J. Holcomb} A. B. Munsey
3 Clerk of the Circuit Court for said County, and
4 made oath that ^{they} facts contained in the fore-
5 going Answer is true to the best of his knowl-
6 edge and belief Given under my hand this
7 the 14th day of March 1894

8 A. B. Munsey Clerk
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James M. Wheeler.

Answer

vs Gordon and

Silva.

C. R. Kirtland et al.

Filed in open court March the
14th 1894 A.B. Munsey clerk

3

To the Honorable W.T. Miller Judge of the Circuit Court of
Lee County Virginia:

The joint answer of C.R. Kesterson and Mollie Kesterson his wife to a bill in chancery exhibited against them and others by James M. Wheeler.

Respondents say that it is true that the said James M. Wheeler Sen., the father of your female respondent, departed this life intestate, on the day of March 1891, that at the time of his death he was seized of a valuable estate composed of both realty and personalty: that the administration of said estate was by the County Court of Lee County committed to the said James M. Wheeler and your male respondent C.R. Kesterson, that the heirs at law of the said James M. Wheeler Sen. are correctly set out in said bill.

Respondents say that it is further true that the real estate of the said James M. Wheeler Sen has been partitioned among his said heirs at law, that it is further true that the Administrators of said estate have gone forward in the discharge of their duties as such, until it has become proper to have the subject of advancements made by said decedent in his lifetime ascertained, so that equalization may be had out of the estate still in their hands.

Respondent says it is true that the said Decedent in his life time did make large and valuable advancements to his two daughters, to your female respondent, her father the said James M. Wheeler in his lifetime made the following advancement, to wit \$450.00 as of the first day of January 1889, and \$450.00 as of the first day of January 1890, these two sums were for the rent of what is and was known as the said James M. Wheeler's home place for the years 1888 and 1889, which renting was at the price of \$450.00 per year and was to become due at the close of the year and while it was not at the time of renting, especially contracted for as an advancement, yet at the time it became due and when payment of said rent was tendered by your male respon-

dent the said Wheeler requested him to keep it as an advancement to your female respondent.

Your male respondent rented said Home farm from his fatherlaw the the said James M. Wheeler for three years prior to the year 1888 to wit for the years 1885 1886 & 1887, for which rent he paid him at the close of each year.

The said Decedent made a further advancement to your female respondent on the day of 1890 of fifteen hundred dollars thus making the sum of \$2400.00 which she received from her father in his lifetime, and since his death she has received from said Administrators, the sum of \$3010.25 as set out in the bill and these items constitute all she has ever received at any time from the estate of her father either in his lifetime or since his death: Respondents further say that the said James M. Wheeler advanced his daughter Margaret, large sums in his and her lifetime, and according to their information the sums so advanced are set out in said bill. Your male respondent says that it is true that he and the complainant, as Administrators of the estate of the said Wheeler have made various attempts to settle and adjust the advancements made by the said decedent in his lifetime to his two daughters, with the said W.G. Colson the father, and at that time the guardian of the said infant children of the said Margaret Colson deceased, without the necessity of going to law about it, and for that purpose he and his Co-administrator and the said Colson made one or two trips to Jonesville, the said Colson all the time saying that said settlement would be made by him as the guardian of his children without a suit and the expenses necessary thereto. Respondents are perfectly willing to bring into hotchpot and account for everything that they have received and they here ask that the other heirs be held and required to do likewise and that if any of them fail or refuse so to do then that the estate be partitioned among those who do come in, and the other be barred ~~therefrom~~ from hereafter asserting any claim to any part of said estate. And now having answered said bill as fully as they are advised *It is necessary for them to answer* ~~it is necessary for them~~

To answer and shew pray to have
drawn and to

Discontinue & stay all
alterations for said rights

C. R. Hester & wife
ad by answer

James M. Wheeler

Filed in open court
this the 15th day of
June 1844

A. B. Munnery
Clerk

(55)

To the Honorable W. J. Miller Judge
of the Circuit-Court for Lee County
Virginia:

The separate demurrer and
amended answer of W. G. Colson to a
bill of Complaint exhibited against
him and others in the Circuit Court
for Lee County Virginia, by James M.
Wheeler.

Respondent says that said bill of
Complaint is not sufficient in law,
and he demurs thereto accordingly, and
not waiving said demurrer, but relying
and insisting thereon, should further
answer be required of him, he makes
the following answer to said bill:

Respondent says it is true that James
M. Wheeler ~~is~~ departed this life intestate
sometime in the year 1891, leaving a large
and valuable real and personal estate
situate in said County, and that he sup-
poses that letters of administration were
granted on the date mentioned in said
bill to the said James M. Wheeler and
C. R. Kesterson on said estate; and that
it is true that the said James M. Wheel-
er had three children, to wit, Mollie
who intermarried with C. R. Kesterson,
Margaret who intermarried with your
respondent, W. G. Colson, and James M.
Wheeler; and that the said Margaret
departed this life before her father

James M. Wheeler Sr, leaving surviving her
four children, Louie, Nora, James,
Terdie, and Lelia Colson, all of whom
are infants under the age of twenty
one years; and that these four children
of the said Margaret Colson, the said
Mollie Kesterson, and the said James M.
Wheeler constitute the heirs of the said
James M. Wheeler Sr deceased to
whom his estate, both real and perso-
nal descended.

Respondent says that it is true
that the real estate of the said James M.
Wheeler Sr deceased, has been partitioned
among his said heirs that is situated
in Lee County Virginia.

Respondent says that it is true that the
said James M. Wheeler Sr in his life
time made large and valuable ad-
vancements to his daughter Mollie Kes-
terson, and here charges and alleges
that the advancements so made to her
are largely in excess of the sum of
\$2400.00 as stated in said bill.

Respondent here charges and alleges
that the said Mollie Kesterson received
the following advancements from her
father James M. Wheeler Sr, in his life
time :-

On the day of 1.8 the sum
of \$1500.00 in cash; and the rents of
the house place where the plaintiff

1 now lives, for and during the period
2 of five years, for which she and
3 ~~and~~ her husband the said
4 C.R. Hesterson, were to pay \$700⁰⁰
5 per annum, making a total of
6 \$3500⁰⁰ of rents which they failed
7 and refused to pay as per their
8 Contract, and ^{with} changed now be held
9 and treated as an advancement
10 to the said Mollie Hesterson

11 Respondent denies that he or his said
12 wife Margaret Hesterson received from
13 the said James M. Wheeler Sr, in his life
14 time, the sum of \$5500⁰⁰ as ^{an} advancement
15 or charged in said bill.

16 Respondent says it is true that he received
17 \$1000⁰⁰ on the 9th day of February 1883,
18 and for which he executed his individual
19 at note to the said James M. Wheeler
20 Sr, but denies that he received it as
21 an advancement, and here charges
22 and alleges that it was a loan to
23 him as an individual of said sum,
24 and for which he has duly accounted
25 to the said James M. Wheeler Sr, in his
26 life time.

27 Respondent says it is true that the said
28 James M. Wheeler Sr paid \$4000⁰⁰ into
29 the farm purchased by him and
30 said Wheeler from D.R. Young, but
31 denies that this sum was paid by
32 the said Wheeler as an advancement

1 O his daughter, Morganet, ^{or to him} and deems
2 that said tract of land was con-
3 veyed accordingly, and for this
4 \$4000⁰⁰ your respondent here charges and
5 alleges that he has duly accounted to the
6 said James M. Wheeler Sr, in his life
7 time.

8 Respondent will here show your
9 honor that for said \$1000⁰⁰, and for
10 the said \$4000⁰⁰, he has duly accounted
11 for to the said James M. Wheeler Sr,
12 in his life time, and here charges
13 and alleges that he accounted to him
14 for the same in the following
15 way: That on the day of
16 18 under an agreement with
17 the said James M. Wheeler Sr, your
18 respondent conveyed by deed to
19 the said Wheeler a large tract of
20 land situated in Bell County
21 Kentucky, and that afterwards, to wit
22 on the day of 18 the said
23 James M. Wheeler Sr re-conveyed said
24 land to your respondent, reserving a
25 sufficient quantity thereof to pay
26 him for the said sum of \$1000⁰⁰,
27 and for the said sum of \$4000⁰⁰. Copies
28 of said deeds will be found filed here
29 with marked "A" & "B" and prayed to be
30 considered as part hereof.

31 Respondent here alleges that the plaintiff
32 in this suit, and his Co. defendants the

1 said C. B. Hexterson and wife have
2 admitted in a writing now in
3 their possession, since the death of
4 said James M. Wheeler deceased, that
5 your respondent had accounted
6 to the said Wheeler Sr, in his life
7 time, as above alleged, this writing
8 your respondent asks and requests
9 that it be produced for the
10 inspection of the Court, said
11 writing is the same that was filed
12 before John A. G. Hyatt Commis-
13 sioner of accounts for the County
14 of Virginia,

15 Respondent deems that he or his
16 wife ever received from the
17 said James M. Wheeler Sr, in
18 his life time the said two sums
19 of \$300⁰⁰ and \$200⁰⁰, by way of
20 advancements or otherwise.

21 Respondent does not know whether
22 the said James M. Wheeler the Com-
23 plainant ever received any advance-
24 ments from his father in his life time
25 or not, but here charges that he was in
26 possession of what is known as the
27 Ely land, where he lived before
28 the death of his father, for the period
29 of five years, and the rents of
30 which the said James M. Wheeler
31 Sr accounted for to the Ely estate
32 and respondent charges that this

1 rent so paid was in the nature of an
2 advancement to the Complainant, and
3 for which he is properly chargeable to his
4 father's estate, and respondent charges that
5 said Complainant is properly chargeable
6 for two years rent for the house place
7 prior to the death of the said James M.
8 Wheeler Sr.

9 Respondent says he does not know
10 how much the said Nellie Peterson
11 has received from the administrators
12 of said estate, but charges that the
13 sum received by her from them is
14 largely in excess, of \$3010²⁵/₁₀₀.

15 Respondent says that he does not know
16 how much said Complainant has re-
17 ceived from said administrators,
18 but charges that the sum so received
19 by him is largely in excess of \$6782³⁵/₁₀₀,
20 and calls for proof of the exact
21 amount received by them from
22 said administrators.

23 Respondent here states that the said
24 heirs of Morgaret Colson deceased
25 has never received one cent
26 from the estate of James M.
27 Wheeler Sr deceased.

28 Respondent deems that he as guardian
29 of said infants of the said Morgaret
30 Colson deceased, or in any way
31 ever attempted to settle with said
32 administrators any question of

advancements to him or his said wife
and deny that there were any such
advancements to be settled for.
And now having answered as
fully as he is advised it is material,
your respondent prays to be hence
dismissed with his reasonable
costs in this behalf expended.
And he will ever pray etc.

H. G. Coleman.

A. H. Dunell
Atty for Respondent,

W. G. Carlson

Adm { Records

Clerk

James M. Wheeler

Filed August the 6th
1894

A. B. Munsey
Clerk

(7)

*In vacation of the Circuit Court of Lee Co
Va March 10th 1896.*

James .M.Wheeler,

Plaintiff.

vs.

In Chancery.

C.B.Kesterson et als.

Defendants.

On the motion of the plaintiff leave is given him to file his bill of review in this cause, and the same is accordingly filed. And on motion of the defendant, W.G.Colson, in his own right and as guardian ad litem for Nora, James, Lelia and Verdie Colson, in fant defendants, who appeared to said amended bi ll of review, leave is granted him to file his own answer and the answer as guardian ad litem of said infants to said bill of review, and the same are accordingly, filed, to which the plaintiff replied generally. And thereupon by the ~~consent~~ sent of the plaintiff and the said W.G.Colson, in his own right and as guardian ad litem for said infants, the court renders the following decree: ~~It~~ appearing to the court from the papers i n the original cause and from the admission of all the patties concerned including the guardian ad litem who is the father of said infants that the same is advantageous to the interest of said infants, it is, by consent of parties, adjudged ordered and decreed that ^{*6 R Kesterson Adm. of J.M. Wheeler decd*} said infant defendants, Nora, James, ^{*3*} Lelia and Verdie Colson, ~~receiver of C.B.Kesterson, administrator of the state of J.M.Wheeler, Sr., deceased,~~ the sum of sixteen hundred dollars with interest thereon from the 10th day of March 1896 and that ^{*he pay to*} E.H.Sewell, attorney ^{*for the guardian ad litem*} for said infants, ~~receiver of said C.B.Kesterson, administrator as aforesaid,~~ the sum of two hundred dollars for services rendered by him for said infants in said original cause and in this cause, with like interest from said 10th day of March 1896; and that said sums when so paid shall be a full acquital and discharge of the decrees heretofore rendered in the original cause and in full ~~satisfaction~~ satisfaction of their interest in the personal estate of their grandfather, J.M.Wheeler, Sr., deceased, but it is expressly understood that this settlement is made upon the basis that the personal estate of the said J.M.Wheeler, after the payment of all just debts and costs of administration amounts to the sum of \$12000.00 and should any amount be realized above

that sum after the payment of costs of collecting the same and all proper charges thereon, then said infants are to share equally therein, that, is, they are to have one-third part thereof. In addition to the sums herein above decreed the said plaintiff together with his wife, and Mollie Kesterson, together with her husband, C.E. Kesterson, are within sixty days from the rising of this court, to convey their interest by deed with covenants of special warranty to the said Nora, James Lelia and Verdie Colson, the John Barnett tract of land situated in Bell County, Ky. on the Clear Fork of Yellow Creek, containing one hundred acres by estimation, it being the same tract of land conveyed by John A. Barnett and Tabitha C. Barnett, his wife, to J.M. Wheeler, trustee for the heirs of J.M. Wheeler, deceased, by deed bearing date January 26th 1892, and they shall also convey within the same time to the said infants the following ~~land~~ tracts of land situated in Bell County, Ky. to wit: the J.M. Wheeler and J.M. Gibson tracts on Hignite of Yellow Creek, and William Turner tract of land on Bean's Fork of Yellow Creek, ^{three} which last mentioned tracts of land were reserved by the said J.M. Wheeler in the deed to W.G. Colson, trustee, bearing date January 8th 1891, filed among the papers of this cause.

And it is further agreed that said note for One thousand dollars executed to the said J.M. Wheeler by W.G. Colson on the 9th day of February ~~1883~~ 1883 is to be delivered up to the said Colson as cancelled and fully settled *And since any matter further to do in this cause it is shown to be of some the closed.*

We hereby agree that the above decree may be entered in vacation and as soon as it is to have all the effects it would have if entered in term.

C. L. Dumas

A. L. Pridemore

Attys for Plaintiff

W. G. Colson Guardian of the Person
for said infants

R. H. Newell atty for W. G. Colson

J. M. Wheeler

vs. $\frac{1}{3}$ Deane funds on
Bible of Brown
L. R. Kesterson et al.

O. B. C. 389

To the clerk of the
Circuit Court of the
Judge Circuit Court of the
J. M. Wheeler
March 10th 1886

James M Wheeler & Compt

vs
C. R. Kesterson Et als Dfts

{ Entitled

This cause came on again this day to be heard upon the papers heretofore read, the report of H. A. W. Sherr Comr. filed May 22nd 1895; the depositions and exhibits filed therewith and exceptions thereto by both plaintiffs and defendants and was argued by counsel

Upon consideration whereof the Court is of opinion that the Comr. properly finds & reports that he is not authorized to pass upon the claims against the estate of J. M. Wheeler & sought to be proved before him

The court is further of opinion that the \$1000.⁰⁰ received by W. G. Colson from James M. Wheeler & Co never did constitute an advancement to Mrs Margaret Colson and that the Comr erred in reporting it as such. The court is further of opinion that while the evidence shows that the \$4000. paid by J. M. Wheeler & Co on the land conveyed by D. K. Young wife to W. G. Colson & his children was intended as an advancement, yet exhibit "X" filed with the deposition of

Richard Pinner shows that said \$4000. as well as the \$1000.~ were repaid by said W.G. Colson to said Wheeler in the life time of the latter he having accepted the Ky lands in repayment of said sums his heirs are not now entitled to have said amounts or either of them treated as advancements to Mrs Colson or her infant children.

It is therefore adjudged ordered & decreed that the exceptions by said Colson guardian ad litem for said infants be sustained on this point, that said report be and the same is in all other respects confirmed, that said infant defendants recover of the plaintiff J.M. Wheeler their costs in defending this suit for which execution may issue.

This decree is not to prejudice or in any manner affect the rights of any of the parties who sought to prove debts against the admin of said Wheeler before the Court in this case, nor is it to effect in any way any settlements heretofore or which may be hereafter made by said admin, except as to the amounts shown by said report to have been paid by them to J.M. Wheeler or

and Mrs Mollie Sherterson as heirs of
J.M. Wheeler. There being no reason
why this cause should longer remain
on the docket the same is stricken
therefrom.

Memo

The plaintiff J.M. Wheeler Jr suggest-
ing that ^{he} is aggrieved by the rendition
of this decree desires to appeal
therefrom it is ordered that this
decree be suspended for a period of
60 days upon the plaintiff or some
one for him executing bond in
the penalty of \$200 Conditioned
according to law

J. M. Wheeler

vs Decree
Final

C. R. Huston & Co.

Entered in

Chancery

Order Book

Page 233

Enter

N. L. M.

June 14th 1895

James M.Wheeler,

Plaintiff.

vs.

In Chancery.

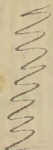
C.R.Kesterson et als.

Defendants.

This cause came on again this day to be heard upon the pepers formerly read and decrees heretofore entered, the amended answer of W.G.Colson filed August the 6th 1894, and exhibit "B" filed with said answer, and general replication to said answer and exhibit, and was argued by counsel.

On consideration whereof, and the court being of opinion that an account of advancements made by the said James M.Wheeler to his children in his lifetime should be taken, it is therffore adjudged ordered and decreed that H.A.W.Skeen, who is appointed a commissioner for the purpose, do take and state an account of advancements made by the said James M.Wheeler, in his lifetime, to his children or either of them, when said advancements were ~~made~~ made, if any were made, and of what they consisted, how much must be paid to either or any of the heirs of the said James M.Wheeler, deceased, to equalize them with the other or others of said heirs. Said Commissioner will also state and settle the administration account of James M.Wheeler and C.R.Kesterson, Administrators of the estate of James M.Wheeler, deceased, and will ascertain what sums, if any, have been paid by said administrators to any of the heirs of the said James M.Wheeler, deceased, when paid and to whom paid, what sum is still in the hands of said Adminis rators belonging to said estate, the amount thereof necessary to equalize advancements, and the balance, if any, left for distribution among said heirs. Said Commissioner in settling said administration account, will take as a basis therefor, any settlement or settlements made by said administrators with the commissioner of accounts of Lee County, and approved and confirmed by the county Court of said County. Said Commissioner will report any other matter deemed material by him, or required to be reported by any party interested; he will file with his report all evidence acted upon by him, and this cause is continued.

James M. Wheeler

vs.  Deere &c.

B. R. Kesterson et als.

For an account &c

Entered in Chy

A. B. Page 117

Enter this decree

W. J. M.

November 17th 1894.

(8)

James M. Wheeler,

Plaintiff.

vs.

In chancery.

C.E. Kesterson, et als.

Defendants.

This cause came on this day to be again heard upon the papers formerly read herein, the exception 3 heretofore reserved for adjudication, the answer of C.E. Kesterson and wife filed in said cause on the 15th day of June 1894, and general replication to said answer, and was argued by counsel. On consideration whereof, it is adjudged and ordered and decreed that said exception 3 be and the same is hereby sustained, and on motion of the defendant, W.G. Colson, leave is given him to amend his answer with reference to the matters and things contained in each of said exceptions if so advised, which amendment must be filed on or before the 1st Monday in August 1894, and the cause is continued.

M Wheeler

Dear

C. R. Nesterson et al

Entire Chy. Ord. Book P 62

Enter this date

June 16th 1894

(6)

J. M. Wheeler,

vs.

C. R. Kesterson wife et al.

This cause came on this day to be heard on the bill of complainant and exhibit its therewith. The answer of the infant defendant by H. G. Carlson their guardian ad litem and general replication thereto. The answer of H. G. Carlson and exceptions No 1 2 3 & 4 to said answer and was argued by counsel on consideration whereof said exceptions numbered 1 2 & 4, are sustained and the Defendant has leave to file an amended answer as to the things contained in said exceptions if so advised. All questions on exception No 3 are reserved for future adjudication. And the cause is continued.

M. Wheeler

rs. \$ 5000

C. B. Kesterson et al

E. C. R. Loge 601.

Mar 16th 1894

E. C. R. Loge
H. K. M.

Mar 16th 1894

(4)

J. M. Wheeler
against
W. G. Colson et al.

on the
motion of the plaintiff in
this cause to file a bill
of review - By the Con-
sent of the parties, the
same is, submit to the
Court, to render such
decree in the cause in
vacation as if presented
and acted on in term
time - And the cause is
continued for said decree.

J. M. Wheeler

25

H. L. Colson

Q.B. 389

Electer

117. 4M

J M Wheeler

vs.

Peff

In Chy

B. R. Kesterson wife & others Defts

This cause came on again this day to be further heard on the papers formerly read therein and the report of L. M. Cassmire. M. S. Ball L. D. Fulkerson & W. R. Bales, the commissioners appointed to partition the lands in the bill mentioned and exhibits therein, filed in the cause March the 24 1892 together with the exceptions filed to said report. By Nora Balson James ^{the} Balson Orinda Balson and Selu Balson by W. G. Balson. Their father and next friend, and was argued by counsel. On consideration of all which the court is of opinion that said exceptions to said report of partition is not well taken, the same are therefore overruled. And the said report of partition, is approved and confirmed, And pursuant thereto it is now adjudged ordered and decreed that the partition of the three tracts ^{of land} awarded jointly by M. S. Ball & the heirs of J M Wheeler decd, be confirmed ~~has~~ made by said court, that is to say that said M. S. Ball take and hold free from the claim of said heirs the two small tracts of land known as the Pace and Holcom tracts and that said heirs take and hold free from the claim of said Ball the tract known as the Galain Chudwell tract, and in the partition of the lands of J M Wheeler Sr. decd among his heirs at law. It is adjudged ordered & decreed that the Peff J. M. Wheeler Jr. take and hold

free from the claim of the other parties, the several tracts, lots and parcels of land assigned him by the said Comrs, and particularly described in their said report, and laid down in the plat which accompanies their said report, and marked on said plat as follows to wit. Lot. A. 2, lot B. 2, lot C. 2, Lot D. 2, Lot E. 2, lot F. 2, Lot G. 2, + Lot H. 2

That Mellie E. Kesterson wife of C. R. Kesterson so take and hold free from the claim of the other heirs the several lots parcels and tracts assigned her by said Commissioners, and referred to, and described by them in their said report, and laid out and shown on said plat, and referred to by them as the several lots tracts and parcels marked No. 1, and further referred to and designated, as Lot. I. 1, Lot J. 1, Lot K. 1, and Lot L. 1.

That Nora Balsam Jas. M. Balsam, Freda Balsam and Selu Balsam infant heirs at law of M. E. Balsam dead so take and hold jointly and in equal proportions the several lots parcels and tracts of lands assigned by said Commissioners, and referred to and described by them in their said report, and laid down and shown on their said plat and marked thereon as the several parcels, as these lots and tracts marked No. 3 respectively and likewise designated thus ^{Lot} M. 3, Lot. N. 3, + Lot O. 3.

But there is expressly reserved from the operation of this assignment about $5\frac{1}{2}$ acres, which was conveyed by J. M. Wheeler Sr. in his lifetime to the L. & N. R. R. Co

and there is ^{also} expressly reserved and excepted from the operation of this assignment about 3 acres and 44/100 out of the lot parcel or tract, Lot M. 3. which was sold by said J. M. Wheeler Esq. in his lifetime to George Wheeler and the heirs and assigns of which is situate in said report and the rights of way for egress and ingress, situate in said report are likewise approved & confirmed for the benefit of the parties respectively, and the clerk of this ^{court} will deliver to the clerk of the county court for recordation copies of the former decree in the cause the said report and plat, and this decree, and the heirs of J. M. Wheeler Esq. Estate, will pay the costs of this suit out of any personal estate in their hands, and no further action being necessary the parties are hence ~~excused~~ and the cause ~~taken~~ from the docket.

Virginia. Lee County to wit: -

In the office of the clerk of the said county the 17th day of October 1892, the foregoing plat and report together with the decrees therewith of the lands of James M. Wheeler Esq. decd. was this day filed in this office and admitted to record.

Teste John R. Gilson clk.

J M Wheeler Jr

no } Deed No 2 final

B R Kistner original

Entered Page 429.

Enter this

June 187892

H S K M

Recorded Deed Book

29 P. 1734

J. R. Gibson & Co.

They will first partition the one tract, the Wilson tract, and the Colvin Chaswell tract
 between the heirs of said Wheeler and Moses S. Ball giving to each an equal half
 thereof as near as practicable quantity & quality considered. And

James M. Wheeler Jr. Peff }
 25. } In Chy.
 vs. }
 L. R. Kesterson & wife & others Defts

This cause came on this day to be heard on
 the bill of the Peff. taken for confessed by L. R. Kesterson
 & Mollie E. Kesterson his wife, ^{+ M. S. Ball} and the answer of
 Nora Balsom, James Balsom, Verda Balsom and Selu
 Balsom the four infant children of Margaretta Balsom
 dead by John M. Morgan their guardian ad litem,
 and was argued by counsel, on consideration of
 which the court is of opinion that the Peff. is
 entitled to have the real estate of the late James M.
 Wheeler divided & partitioned among the parties interested
 according to their respective rights, and to attain
 this end, It is adjudged ordered and decreed that
 L. M. Barnum, M. S. Ball, L. D. Fulkerson, William
 R. Boles - - - and Wm. Hoshins - are appointed
 commissioners for the purpose, any three of whom may
 act, said commissioners will take into consideration
 the quantity and quality of said real estate, the location
 and situation of the several tracts, the conveniences and
 inconveniences if any connected with each tract and
 any other matters tending to enhance or diminish the
 value of any part thereof, and upon this basis
 they they will lay off and partition the real estate of
 the late James M. Wheeler dead into three separate parcels
 as near equal as practicable, and one of these parcels
 they will assign the peff. J. M. Wheeler, for a like parcel
 they will assign Mollie E. Kesterson wife of L. R. Kesterson,
 and a like parcel to Nora Balsom, James Balsom, Verda
 Balsom & Selu Balsom the heirs at law of Margaretta Balsom
 dead. And said commissioners will report their action
 to the court and the cause is continued until the coming on
 thereof.

No 1.

James M. Wheelwright

vs $\frac{1}{2}$ Decree No 1.

C. R. Kesterson & wife vs

Entd Co B #3

page 368-9

Kyallan

Enter this

Dec 3 1890

H. S. K. M.

In Deed Book

No 29 Page 182 &c.

Virginia

At a circuit court continued and held
for Lee County at the Courthouse thereof on 3^d day
of December 1891

James M. Wheeler Jr

Against

C. R. Keeterson & wife et al

Plffs.

Defts

In Chancery

* * On consideration of all which the court is of
opinion that the plaintiff is entitled to have the real
estate of the late James M Wheeler Deceased partitioned
among those entitled and interested according to their
respective rights, and to attain this end it is adjudged
ordered and decreed that L M Commercial M S Ball S D.
Trickerson William R Boles and William Horneris are appointed
Commissioners for the purpose, any three of whom
may act. Said Commissioners will take into consideration the
quantity and quality of said real estate, the location and
situation of the several tracts, the conveniences, and inconven-
iences if any connected with each tract, and any other
matter tending to enhance or diminish the value thereof.
And upon this basis they will partition first, the Fox tract
the Wilson tract and the Galvin Chadwell tract between
the heirs of said Wheeler and Moses S Ball giving to each
an equal half thereof as near as practicable, quantity and
quality considered. And they will lay off and partition
the real estate of the late James M Wheeler Deceased into
three separate parcels as near equal as practicable, and
one of these parcels they will assign the plaintiff James
M Wheeler Jr, a like parcel they will assign to Mollie

E. Westerson wife of E. R. Westerson and a
like parcel to Nora Baleson James Baleson Verda Baleson
and Lila Baleson the heirs of Margaret J. Baleson Dead
and said commissioners will report their
action to the court and the case is
now turned over to the court in their
hand.

At Copy. Teste. -

cc.

Ex. Dec. 22. 1891.
James M. Wheeler Jr.

vs 3/4 Copy of Decree

E. R. Westerson wife
et al.

Dec. Term 1891.

Executed by deliver-
ing a copy of within

notice. H. R. Bales

M. S. Ball, L. D. Fulkerson

Wm. Hoskins and

L. M. Carmichael.

This Dec. 22. 1891.

Jas. R. Vandewater

D. S. for C. E. Flanagan

S. L. C.

Fee for copies \$3.18

6 copies

Me. L. D. Fulkerson and W^m R. Boles
two of the commissioners appointed
by a decree entered in the chancery
cause of J. M. Wheeler against C R
Hesterson & others to partition the lands
owned by James M. Wheeler deceased
at the time of his death among his heirs
do certify that we authorized L. M.
Carnical to sign our names to the
report filed in said cause showing
said partition, and M. S. Bull
the other commissioner in said
cause in our presence authorized
said Carnical to sign his name to
said report, and we do each recog-
nize and adopt, and acknowledge
as our act the signatures of our names
to said report as made by said Car-
nical for us. Given under our
hands This the 10th day of June 1892
W R Boles

L. D. Fulkerson
Virginia Lee County S. W. T.

I John R. Gibson clerk of the County
Court of Lee County do certify that
L. D. Fulkerson and W R Boles each
acknowledged the above writing to
be their acts Given under my hand
This 10th day of June 1892 J. R. Gibson clerk.

J. M. Wheeler Jr
vs Certificate
and Affidavit
C. R. Kesterson et al
Filed June 10 1892
J. A. Hyatt

The deposition of Mrs.L.M.Hobbs and _____
 _____, taken on the 20th day of February 1895, at
 the dwelling house of Mrs.L.M.Hobbs, by agreement of the par-
 ties by their attorneys, which depositions are intended to be
 read as evidence in behalf of Mrs.L.M.Hobbs, on her account ~~ag~~
 against J.M.Wheeler,Sr.deceased, now pending before Commission-
 er, H.A.W.Skeen, in the chancery cause of J.M.Wheeler vs. C.R.
 Kesterson et als.

The witness, Mrs.L.M.Hobbs, being first duly sworn depo-
 ses as follows:

Ques.1. State whether or not at the time R.C.Brent turned over the
 money to C.R.Kesterson at your house, said to belong to J.M.Wx
 Wheeler,Sr.decd., that you on that occasion said that there wa
 \$300.00 more in gold that you had taken in for keeping board~~er~~
 ers?

Answer.

I never said it.

Ques.2. State whether or not on that occasion you said that Mr.Whee-
 ler furnished the supplies and that you did the cooking and
 Mr.Wheeler was to have half of said money?

Answer.

*I told C.R. Kesterson that Mr Wheeler
 furished the supplies and that they was
 nothing said about the money*

Ques.3. State whether or not you refused to turn over to said Kester-
 son the part claimed for Mr.Wheeler?

Answer.

Nothing was said about board money

Ques.4. State whether or not you had any more money there that be-
 longed to Mr.J.M.Wheeler?

Answer.

*I had run other money I turned
 it all over to R.C. Brent*

Ques. 5. State what you did say to C.R. Kesterson, if anything, on ~~the~~ that occasion about said money?

Answer.

I told C.R. Kesterson that Mr Wheeler had a little money here Kesterson said that the law required him to take charge of ~~it~~ the money

~~Ques 1~~ am

ques 1 did you subdue all the money in your hands belonging to J. M. Wheeler when called on to do so by Mr Kesterson

Ans I did

ques 2 did ^{you} not refuse to surrender any money ~~that~~ until R. C. Brent told you to do so and then did you not give up \$40000 in gold

answer I did ^{surrender} not refuse to ^{surrender} the money. Bob delivered up the money to Kesterson

ques 3 how much gold did you have left after given up the \$40000

ans. I did not have any

ques 4 was not you and Mr Wheeler keeping Boarders he furnishing provision and you the labor and was you and he not to divide equally

ans. he furnished the provision, me and Allie was to ^{have} the money

ques 5 did you not have \$30000 in gold left of which Mr Wheeler was entitled to one half

ans I did not

Mrs L M Hobbs

Magistrates costs one hour

75-cent

Received
July 21, 1893
W. A. W. Sherrin
Special Comm

Magistrate's Court
and Court
75-24

I hereby certify that the foregoing
Deposition of Mrs L. M. Hobbs
whose deposition has
been taken were taken subscribed and
sworn ~~to~~ before me at the time and
at the place mentioned in caption
witness my hand this the 20th day of
Feb 1895 -

W. J. Campbell J. P.

1890 J. M. Wheeler Sr To R C Brent do
 Jan from 8 to 25 - To Cash \$200.50
 " " " " Cr By bill paid \$120.00
 " 25 to Feb 9 To Cash \$323.40
 " " " " Cr By Bill paid \$158.00
 Feb 9 to June 1 To Cash \$775.85
 " " " " Cr By Bills paid \$175.00
 Feb 11 to 28 To Cash 213.05
 " " " " Cr By Bill \$119.00
 Mar 24 to Apr 8 To Cash 346.00
 " " " " Cr By Bill \$179.00
 Feb 23 to Mar 26 To Cash 379.00
 " " " " Cr By Bill \$224.55
 Feb 24 to Mar 25 To Board Money 187.00
 \$1218.05 \$2434.70
 1218.05
 \$1216.65

Virginia Lee Co, Ind.
 J. W. A. W. Shum Special Commr
 now in the Chancery cause of J. M.
 Wheeler Jr against R C Brent sub-
 made oath that the above account
 is just and correct and is
 not subject to any off-sets or
 credits except what is shown
 in said account and that
 account should bear interest from
 April 6, 1891. Given under my
 hand this July 16, 1895
 H. A. W. Shum
 Special Commr

Account of R.C.Brent.

R.C.Brent, a witness introduced on his own behalf, being first duly sworn, deposes and says?

Ques. 1. by E.H.Sewell, Counsel for said Brent. State whether or not due J.M.Wheeler, Sr. is ~~indented~~ to you for the balance of \$1216.65 with interest as shown by the account of yours here filed?

ANSWER. The administrators of J.M.Wheeler, decd. object to this witness testifying for any purpose because J.M.Wheeler, the which is other party to the transaction, the subject of investigation, is dead, and this witness is incompetent to testify.

Duncan & Hyatt, Atty.&c.

Answer. He is.

Ques. 2. Please explain the transaction and the way by which Mr. J.M. Wheeler, Sr. is due you this money?

Answer. I was running a whiskey business. Mr. Wheeler first ordered some whiskey from Knoxville. I sold it out and turned the money arising from the sale thereof over to Mr. Wheeler. He paid the bills out of the money that came out of the whiskey. I turned the money over to him for the purpose of him keeping and saving it for me. Mr. Wheeler had no interest in the whiskey. I was to have all the profits. Mr. Wheeler was to pay the whiskey bills out of the money turned over to him by me, and was to ~~retain~~ keep the rest for me. The money thus turned over to him continued up to within about eight months before Mr. Wheeler's death.

Ques. 3. State whether or not the account here filed by you shows the amounts of money thus turned over by you to him, and the amounts of the bills paid out of said money by him for you.

Answer. It does.

Ques. 4. Have you any account book kept by you or by Mr. Wheeler giving these amounts and transaction or any part thereof and if so produce said books and file copies thereof as part of your deposition.

Answer. I have such books. I was kept by me and the other was ~~kept~~ kept partly by Mr. Wheeler. The book kept by me is marked "R. C. B." and the one kept by Mr. Wheeler "J. M. W." a small red backed book.

Ques.5. Take said two books and show by each of them there in the amounts turned over to Mr.Wheeler, and the bills paid out by him for you ~~xxxxxxx~~ .

Answer. I herewith file copies of said books so far as the same apply to this transaction.

Ques.6. Is there any difference between the books kept by you and p Mr.Wheeler.

Answer. I think there some difference, but I have not made a sufficient calculation to show the exact difference. Sometimes I would put down the several small itens of cash turnes over and he would put down the total amount of said items, and vice ver sa.

Ques.7. After paying the bills for you out of this money, was he to keep for you and turn the balance back t you.

Answer. He was.

Ques.8. When was he to do this and why did he not do so in his life time?

Answer. There was no set time. Any time I needed it, he said I could have it; that he would just hold it for me. He got down sick and the matter was not mentioned to him then.

Ques.9. Please state your age and the date of your birth.

Answer. I was born 10th of August 1870.

Ques.10. Is the small book filed with your deposition, purporting to be kept by Mr.Wheeler of this transactio , in his hand-writing

Answer. I have seen him write some of it in there. It is in his handwriting. Brent Hill came down to my house a few days ago and said he wanted to look for some papers of Mr.Wheeler's. He found this book. I did not know it was there until He found it.

Ques. Cross examination by counsel for J.M.Wheeler's Admrs.

Ques.1. The ~~plaintiff's~~ administrators of J.M.Wheeler,Sr. decd., without waiving the objection heretofore made to this witness testifying, on account of his incompetency, because of the death of J.M.Wheeler,Sr., and still insisting upon said objection will now proceed to cross-examine said witness.

Ques.1. What time did you commence the whiskey business of which

3.

you speak in your examination in chief?

Answer. I commenced selling in 1889, and about the latter part of that year.

Ques.2. What was the amount of the first bill purchased by you, who purchased it for you, and who paid it.

Answer. The first bill was \$119.00 purchased by Mr. Wheeler, and he paid it.

Ques.3. What was the date of said bill, and please file it with your deposition as part thereof?

Answer. It was about December sometime, 1889. I have not the bill with me. I have them at home. I will produce the bill and file it

Ques.4. What was the amount of the next bill purchased?

Answer. The next bill was Jan'y. 25th 1890 and amounted to \$158.00.

Ques.5. The next bill.

Answer. April 13th 1890, and amounted to \$417.50. This is the amount of three bills which I have added together.

Ques.6. What was the date and amount of the fourth bill?

Answer. Feb'y. 11th 1890, and cost \$119.00

Ques.7. What was ~~h~~ the amount and date of the fifth bill.

Answer. Feb'y. 23rd and amounted to \$224.55.

Ques.8. Give the date and amount of the 6th bill.

Answer. March 26th, \$179.00.

Ques. Give the amount and date of the 7th bill.

Answer. Feb'y. 24th, \$187.00. This is not a whiskey bill, but it was out of money

Ques.10. paid to him, that I got from a boarding house that I run.
above named

Ques.11. Do ~~the~~ ~~the~~ whiskey bills constitute all the whiskey bought for you by Mr. Wheeler?

Answer. Yes sir.

Ques.12. What is the date of the last one?

Answer. March 26th 1890.

Ques. 13. Then what is the date of the last money you turned over to Mr. Wheeler?

Answer. I could not say exactly, I do not remember. It was April 3rd 1890.

Ques.14. What did you do with your money received on the sales of whiskey after that day.

4.

Answer. I saved it up until I got about \$1100.00 mostly in checks, and then I went down to Cumberland Gap and deposited it in Bank.

Ques.15. Give the date when you made said deposit.

Answer. I cannot exactly remember exactly, but I think it was about August 1890.

Ques.16. Who purchased your whiskey for you after the 26th of March 1890, and how much did the bills amount to between the 26th day of March 1890, the date of the last bill purchased for you by Mr. Wheeler, up to the time you made said deposit?

Answer. I purchased it myself. I cannot say, as I have not said bills with me. I have them at home. I think there was about \$400.00 or \$500.00, or near that.

Ques.17 How long did you continue in the whiskey business after the time you made said deposit in the Cumberland Gap Bank?

Answer. I guess it was 12 months or longer. I quit about August or September 1891 as I best recollect.

Ques.18 What was the amount of profits made by you from the time you commenced the whiskey business in ^{Dec.} 1889 up to the time you made the deposit in the Bank of Cumberland Gap, as above stated by you?

Answer. I made the \$1100.00 and the amount due me here by Mr. Wheeler up to that time. But the amount of the bills of some \$400. or \$500.00 came out of the \$1100.00.

Ques.19. Please give the amount of ~~xxxx~~ the profits made by you from the time you commenced business in Dec. 1889, up to the time you made the deposit in the Bank at Cumberland Gap, as ~~near~~ nearly as you can in dollars and cents.

Answer. About \$1800.00.

Ques.20 Had you paid the bills purchased by you after the 26th of March 1890 before you made said deposit in said Bank or any of said bills?

Answer. I had not.

Ques.21. Please state the percentage of profit that you realized after deducting bad debts, amounts given away and amounts consumed?

Answer. I can't tell. I bought whiskey at from 95 cents up to \$1.50, and sold it at from \$4.00 to 6.00 per gallon. I drank

a good deal and gave a good deal away. I also made some bad debts.

Ques.22. Please explain the boarding-house matter charged in your account.

Answer. Mr.Wheeler told me that there was a house up there at the store, and that I could go up there, make me some bunks, and board some men. I boarded from 8 to 15 men. I furnished the provision and paid for it. The money I have him charged with is the profits of the boarding house, which I turned over to him.

Ques.23. Will you please file with your deposition all the bills for liquor purchased for you by Mr.W~~h~~~~h~~~~e~~~~e~~~~l~~~~e~~~~r~~ and all the bills purchased by yourself up to the time when you made the deposit in the Cumberland Gap Bank as above stated by you.

Answer. I will do so. I have not the bills with me, but will send them to Commissioner Skeen by Monday ~~morning~~ or Tuesday morning's mail.

Ques.24. Who has the receipts for the bills paid for you by Mr.Wheeler? and if you have them, please file them with said Comr. as a part of your deposition.

Answer. I think I have them all. I will file them. I have not them with me, but will send them to said Comr. with the bills spoken of above.

Ques.25. I see from the small book which you have filed with your deposition marked "J.M.W." on page marked "10" under date of Feb 18th 1890 Betterton bill, \$144.15. Is that a bill for whiskey and was it paid by Mr.Wheeler for you? On the same page under date Feby.17, is bill of beer bought \$85.00. Is that a bill bought and paid for by Mr.Wheeler for you.

Answer. ^{I suppose they were.} Yes. He would not have put it down there unless it had been straight.

Ques.26 On page 11 of the same book and commencing with date Feby 23rd and extending to March 25th 1890, I see that Mr.Wheeler charges himself with cash received from Bob different sums amounting in the aggregate to \$379.00 Is that charge against himself correct? And did you deliver to him within said dates

any sums which he has not charged to himself on said books. If so, please state the sums and the date thereof which you delivered to him and with which he has failed to charge ~~you~~ himself. And are you the person meant by "Bob"?

Answer. The charge against himself is correct. It is likely that I did deliver to him certain sums within said dates with which he ~~has~~ did not charge himself on said books. From my books I know in reason that I did. I see from an inspection of the books that he and I for said period agree exactly on our books I am the same Bob, that is what he always called me.

Ques.27 On page 12 of said book and of date Feby.6th 1890 is a bill paid for \$119.75. Is that one of the bills he paid for you?

Answer. I suppose it is, and I see that he has ~~xxxxxx~~^{taken} off \$7.50 on on five barrels of beer which I suppose is discount leaving \$112.25, paid for me.

Ques.28. On page 13 of said book beginning with the date of Feby11th 1890 and running to and including Feby.27th 1890, I see he has himself charged for cash received \$216.35. Is that correct? and is that all the sums which he received from you during that time?

Answer. In a comparison between my books and his of these respective dates, I find that My charges against him and \$213.05, making a difference of \$3.30 with which he charges himself more than I have him charged with.

Ques.29. On page 14 I see that he has himself charged Feby.11th 1890 cash and checks \$61.40, cash \$5.00, and cash \$40.00. What do these charges mean? Have you any such charges on your book? and did you let him have these amounts in addition to the \$420 charges ⁵ on page 13 and if so, were they on the liquor business or some other business. Are they correct?

Answer. These charges mean that I let him have the money. My ~~book~~ book do not show such charges. I may have paid him the \$61.40, the \$5.00 and the \$40.00 all together. Sometimes I would pay him \$10.00 and \$20.00 and \$40.00 and ~~he~~ put them on my book as a whole ~~xxxx~~ amount I paid him. All the items that you are now asking me about commencing on page "10" are on the liquor

business.

Ques.30. Does this page 14 refer to your business and has at all?

Answer. It does.

Ques.31. Have you any charge on your books corresponding with any ~~ch~~ charge on said page 14. If so, please point it out, and give the page?

Answer. I see on my book under date of Feby.9th two charges of \$66.40 and \$40.00 making in amount the same as the \$61.40, \$5.00 and \$40.00 as appears on Mr.Wheeler's book of date Feby.11th.

Ques.32. ~~Ques.~~ On page 15 of said book I see under date of Jany.16th amount of bill to Betterton \$153.40. Is that corret and was it paid by Mr.Wheeler for you? ~~X~~

Answer. It is correct and was pid by Mr.Wheeler for ~~you~~

Ques.33. On page 16 of said book I find from Bob received variaous amounts ~~xxxxxx~~ beginning Jany.22nd down to Feby 10th amounting to \$217.00. Is that correct?

Answer. It is. My book and his book are exactly alike except that I have on the same page the two items of \$66.40 and \$40.00 included in my last answer above.

Ques.34. On page 17 I find the following on date of January 3rd 1890 bill paid Betterton \$120.20. Is that correct and was it paid for you by Mr.Wheeler.

Answer. I expect it is correct. I see the only difference between his book and mine is \$0.20.

Ques.35. On page 17 of said book I see that Mr.Wheeler charges himself self received of Bob begining Jany.9th and ending Jany.26th \$188.50. Is this correct?

Answer. The same is not corect. As I have it on my books he should be charged within the dates mentioned with \$12.00 more making the amount \$200.50 instead of \$188.50 as he has it.

Ques.36. On page 9 of said small book under date of Feby.27th to March 25th, cash on board amounting to \$187.00. Is that the same charge you have?

Ansr. It is.

Ques.37 On page 190 of your book, the leaves of which you have filed, under date of January 22nd, I see you charge Mr.Wheeler, \$

8.

To cash from W. Robinson, ^{\$7.50} on page 189, To cash paid W.R. \$65.00 and on page 180, By one check W. Robinson \$30.00, and on Page ~~ANEX~~ 178, from W. Robinson \$122.00. Were these sums received by my Wheeler, and was it money that properly belonged to you?

Answer. These sums were received by Mr. Wheeler and properly belonged to me.

Ques. 38. Is there any other sum paid by Mr. Wheeler to any person for you, for which you ought to give him credit and have not? If so please state the amount.

Answer. There is none that I know of.

~~Re-examination~~

Ques. 39. ~~State~~ On the boarding-house business, from whom did you get the provisions used by you?

Answer. I got the provisions from one and another and among others I got a shoulder from Mr. Wheeler weighing 40 lbs at 8 cts which amounted to \$3.20 for which I paid him cash. This was all I got from him.

Re-examination.

Ques. 1. State whether or not the account between you and Mr. Wheeler as appears on page 180 of your book, of the amount you turned over to him of \$775.85, and the amount of the bills paid out of this sum by him for you amounting to \$417.50 is correct.

Answer. It is and unpaid.

Ques. 2. Does this same transaction appear on Mr. Wheeler's book filed by you with your deposition, or any part of it? And if not ~~ANSWER~~ should it appear on said book?

Answer. No, I do not think it does, or any part of it. I have just examined his book and it does not appear. It should appear on his book.

Ques. 3. This additional charge as appears from your book is a proper charge against Mr. Wheeler?

Answer. It is.

Ques. 4. ~~Am I understand~~ I will ask you whether or not you presented this account to the Administrators of Mr. Wheeler for settlement soon after Mr. Wheeler's death?

Answer. I presented it to Mr. Kesterson about six months after Mr.

Ques Wheeler's death.

Ques. 8. State if you placed these accounts of your against Mr. Wheeler with Judge Duncan for settlement and collection?

Answer. I did. I put them in his hands to examine, but I never ordered him to collect them, but it was with a view of having them examined and collected. ~~Judge~~ And before I have him any directions in reference to taking steps to collect them he informed me that he had been employed by said administrators to represent them.

~~Ques. 1.~~ Re. Cross examined.

Ques. 1. On said page 180 of your book ~~marked~~ on which Mr. Sewell has just examined you, I find April 24th 1890 the following: By one check WRobinson \$30.00, how was that.

Answer. ~~I think~~ Mr. Robinson paid me the check and I turned it over to Mr. Wheeler.

Ques. 2. I see under date of May 24th you have Mr. Wheeler charged with cash sent to Knoxville, \$80.00. What was that for?

Answer. I paid it to him on the bills for whiskey.

Ques. 3. Did he pay it out for you there?

Answer. If he paid it out he paid it for whiskey.

Ques. 4. I see on the same page under date of May 28th the following charge; cash paid over when come back \$80.00. Are those two items the same thing?

Answer. They are not.

Ques. 5. Did you not give him \$80.00 when he started to Knoxville to pay out for you.

Answer. I did not.

Ques. 6. What I want to ask you is this: Is not the charge dated May 28th 1890 amount cash sent to Knoxville \$80.00 an amount which you gave him when he started to Knoxville? and is not the amount dated May 28th cash paid over when come back from Knoxville the same thing? Did you not give him \$80.00 to pay out there, and when he came back, he returned the same \$80.00 to you?

Answer. No he did not. If I gave him any he paid it out.

Ques. 7. Then do you remember distinctly that you gave him \$80.00

This matter has been
settled by said parties
and said reference
was taken

W. F. W. Dhu

The Court

tle money from him. The women folks says are you going to use all the money that Bob makes, and he says no, I am going to use it while I need it; he don't need it now. I will ~~be~~ pay it back to him whenever they wind up this business; I aim for him to have all he makes. This was about a month before Mr. Wheeler taken down sick.

Ques. 2. State whether or not you ever heard Mr. Wheeler make the statement that he owed Bob money more than once as you have above stated?

Answer. Yes, I reckon I have head him say he owed Bob money a half dozen times or more.

Cross-Examined

Ques. 1 Who was Mr. Wheeler taling to when he said he owed Bob money, and how come him to be talking about it?

Ans. He was talking to Mrs. Hobbs Mrs. Hurst and Miss Allie Brent he was going off some where and mentiomed it.

Ques. 2 Do you know where he was then going?

Ans. I do not.

Ques. Were you then living with him?

Ans. Yes Sir .

Ques. 3 Give me the date when this conversation occurred as nearly as you can?

Ans. I do not know that I can do it.

Ques. 4 Was the railroad then running ?

Ans. Yes Sir.

Ques. How long had it been running?

Ans. I reckon it had then been running about one year.

Ques. How long was this before Mr. Wheeler died?

Ans. About one month .

Ques. Was Mr. Wheeler then sick?

Ans. No Sir: He was sorter complaining bu was not then down.

Ques. Had he then hurt his hand by striking at the Irishman?

Ans. No Sir. He had not then hurt his hand.

Ques. Now had it not been a good deal more than a month before he diedt that he hurt his hand?

Ans. I do not think so.

And further this witness saith not.

his
See + Gibson

J.B.Hill, another witness introduced on the part of R.C. Brent, being first duly sworn deposes and says:

Ques.1. Were you acquainted with J.M.Wheeler, Sr. in his lifetime, and if so how long did you know him?

Answer. I was. I worked with him and for him from 1878 up to the time we went into the mercantile business together, which was in the fall of 1889.

Ques.2. Are you acquainted with the handwriting of R.C.Brent and of J.M.Wheeler? And if so is the small ~~x~~ book filed in this case marked "J.M.W." showing the transactions with Bob in the hand writing of Mr.Wheeler? and also the book marked "R.C.E." showing the same transactions in the hand writing of R.C.~~Brent~~ Brent?

Answer. I am acquainted with the hand-writings of both of said parties. The samll book marked "J.M.W." is in the hand-writing of J.M.Wheeler, Sr. and the book marked "R.C.E." is in the hand-writing of R.C.Brent.

Ques.3. State whether or not you ever heard Mr.J.M.Wheeler, in his lifetime, say that he owed R.C.Brent any sums of money, and if so how much, and when it was that he made such statements?

Answer. Not very many months before Mr.Wheeler died, and ~~before~~ ^{after} the time of the trip he made to Louisville, I heard him say that Bob claimed that he ~~owd~~ owed him \$1200.00, and that he guessed he did. My best recollection is that Mr.Wheeler made the trip to Louisville in February before his death.

Ques.4. State where you were when you heard Mr.Wheeler make these statements?

Answer. We were about 150 or 200 yards from the State road there at the Brent place. We had been over where the depot now stands.

Cross-examination.

For the purposes of this case it is admitted that R.C.~~Brent~~ Brent was born on the 10th day of August ~~1870~~ 1870 as stated in his depostion.

Duncan & Hyatt, Atty for Admrs.

Ques.1.

Ques.1.

How long was Mr.Wheeler sick before he died?

Answer.

He was complaining all the spring. He was complaining some before he went to Louisville. He was confined to his room some three weeks or more before he died. As before stated I think he went to Louisville in Feby. He attended to some business ~~in the first~~ or at least talked with me on business matters as last as March 24th 1891. I do not remember but one time he was at mine and his store after he returned from Louisville, which I think was about the first of March.

Ques.2.

In answer to question 3. you state" Not very many months before Mr.Wheeler died and after the time of the trip he made to Louisville I heard him say that Bob claimed that he owed him \$1200.00 and that he guessed he did." Where did this conversation occur, and what brought it about.

Answer.

As I said before it was in the field between the Brent house and the depot, or where the depot now is. We were coming from the depot, and he ^{had} got a little out of humor with Bob. He remarked and said may be the boy will do some good. I asked him if Bob was doing any good selling whiskey. He said yes that he had make some money; that Bob claimed he owed him ~~the~~ \$1200.00 and he reckoned he did.

Ques.3.

Up to that time Bob had been living with Mr.Wheeler, and working for him and Mr.Wheeler had been caring for him, had he not?

Answer.

Yes.

~~XAND FURTHER THIS WITNESS SAITH NOT~~

Ques.4.

You were in business with Mr.Wheeler and had known him for the time stated in your deposition. I will now ask you whether or not you found him a correct man in his business and in the keeping of his accounts?

Answer.

As far as passed between me and him I did. And as far as I ever knew ~~of his business~~ I knew nothing except between the firm of Wheeler & Hill.

And further this witness saith not.

J. B. Hill

J. B. Hill

The deposition of C.T.Duncan a witness introduced by Mrs.L.M. Hobbs,as evidence in her behalf in support of an Account for \$482.00, presented by her against the estate of J.M.Wheeler deceased.

Said witness after being duly sworn deposes and says.

Ques.1

Please state what you may know in regard to Mrs.L.M.Hobbs conveying any land to the Louisville and Nashville R.R.Co.for depot purposes under a contract with J.M.Wheeler, and how much land was thus conveyed by her?

Ans.

In the year 1890, and after the railroad had approached sufficiently near completion for the purpose ~~of~~ the location of Depots, J.M.Wheeler became an applicant for a depot at the point where the present Depot of Wheelers is located, in fact at the time Mr.Wheeler made deeds for right of way through the two tracts of land owned by him over which said road was constructed, I had agreed with him to locate a depot on his land or at some point designated by him. I saw Mr. Wheeler sometime in the summer of 1890 and asked him to designate the point where he wanted the depot located, he did so and named the place where said depot is now erected. I ~~preparaz~~ then told him that he did not have enough land of his own there that was suitable for the purpose, he said that was all right or words to that effect. There was at that time another applicant for the location of a depot in and for that neighborhood, I then prepared an application for a depot to be signed by Mr. Wheeler, stating what he would do, that is what he would convey to the Company if a depot was established at that place, said application embraced as I remember part of the lands of Mrs.Hobbs and was afterwards returned to me as I remember signed by both Mrs. Hobbs and Mr.Wheeler, I may have said application among my railroad papers, if so I will file it. Afterwards nad about the middle of August 1890, we established or determined to establish the depot at the designated point, and on the 21st day of August 1890, as I see from the date of the deeds, I went to the place where Mr. Wheeler and Mrs. Hobbs lived when they executed separate deeds for the lands I wanted. I do not know

2

what arrangements existed between Mrs. Hobbs and Mr. Wheeler, there was very little said at the time said deeds were executed in reference to the matter. The amount of land conveyed by Mrs Hobbs as shown by the deed is 4 and 82/100 acres.

Ques. 2 With whom did you as attorney for the L. & N.R.R. Co. negotiate with for this land for depot purposes at Wheelers station.

Ans As I remember all the negotiations were with Mr. Wheeler, I don do not now remember ever having any talk with Mrs. Hobbs in reference to the location of a depot at that place until the day she executed the deed and very little then. In fact about all that I remember as being had with her was to read the deed to her and ask her to sign it if it was all right.

Ques. 3 What was the fair cash value of the land conveyed by Mrs. Hobbs to said Co. for depot purposes at the date of said conveyance I mean the value by the acre?

Ans I am not very well acquainted with said land as to its productive quality, it is pretty level and smoothe, sometime in fall of 1889, Mrs. Hobbs conveyed me a strip of land for right of way which contained as I see by the deed $7\frac{152}{1000}$ acres, and the price paid by me for the same was \$500.00. All of said last mentioned strip is not level and smoothe as the strip conveyed for depot purposes, but I think some of it was better land. I think said land was fairly worth ~~from \$50.00 to \$60.00~~ per acre, I mean the depot strip.

Ques. Please file a copy of said deed with your deposition marked "Hobbs deed"

Ans. At your request I file a certified copy of said deed marked ~~as follows~~ "Hobbs deed"

And further this deponent saith not.

C. L. Duncan

R. C. Brent another witness being duly sworn deposes & says

Ques. 1 State whether or not you ever heard Mrs. L. M. Hobbs and J. M. Wheeler deceased in his lifetime, talk over the matter of her conveying for him any land to the L. & N.R.R. Co, for depot purposes at Wheelers station in Lee County Va. and if so state what what was said by them?

Ans.

I did hear a conversation between them at one time about said land. I heard Mrs. Hobbs tell him that she would convey said land as requested by him, and ~~that~~ ^{said he} he would pay her what ever it was worth. She said that was all she wanted or words to that effect.

Ques. 2

Are you familiar with the lands conveyed by her to the Railroad, if so what is its fair cash value for depot purposes.

The latter part of said question is objected, to, the enquiry should be what is the fair cash value of the land to the grantor. Its value for any particular purpose is immaterial

Duncan & Hyatt atty

Ans.

I am familiar with the land I was raised on the farm. If I wanted to purchase it for farming purposes I would not want to pay over \$35.00 per acre, for ~~a~~ depot purposes I think it was worth \$100.00 per acre

And further this deponent saith not.

R. E. Brent

J.B.HILL another lawful witness first being duly sworn deposes and says:

Qes.

State whether or not you ever hear Mrs. L.M.Hobbs and J.M.Wheeler talked over the land transaction, for which her account is filed in this case, if so what were said by them, when it was?

My recollection is that the day the deed was made for the land MR. Wheeler told in the presence of all that were there that he had to buy the land from her and give it away to the railroad company?. *He also said he would pay her what it was worth.*

And further the deponent saith not.

J.B.Hill

Hobbs Claim.

G.W.Wheeler, a witness of lawful age, being first duly sworn deposes as follows; introduced on behalf of the Admrs. of J.M.Wheeler's estate.

Ques.1. Were you acquainted with J.M.Wheeler, Sr. decd, in his lifetime?

How long had you known him?

Answer. I was acquainted with him. I had known him about 22 years.

Ques.2. Were you acquainted with Mrs.L.M.Hobbs, and if so, how long have you known her?

Answer. I am acquainted with Mrs.Hobbs, and have known her about the same length of time.

Ques.3. Please state if you are acquainted with the strip of land conveyed by Mrs.L.M.Hobbs to the L.& N.R.R.Co. for depot purposes, and how long have you known it?

Answer. I am tolerably well acquainted with and have known it from 15. to 18 years.

Ques.4. What ~~xxxx~~ was the fair cash valuation of said strip of land on the 21st day of August 1890?

Answer. It seems to me that \$20.00 or \$25.00 would be a fair value for that land the way I look at it, by the acre.

~~Ques.5.~~ Cross-examined.

Ques.1. About August 1890 did you not ^{purchase} some land from J.M.Wheeler, Sr decd. adjoining this Hobbs land or near to it? and if so, what price per acre did you pay J.M.Wheeler for said land?

Answer. ~~ANSWER.~~ Objected to because immaterial and irrelevant.

Duncan & Hyatt, Attys for Ads

Answer. I did, lying about 400 yards from this Hobb's land up on the main road. I did not buy said land by the acre. I bought a house and lot with a right good orchard on it. I paid him \$400.00 for the lot. It ran out nearly 4 acres.

Ques.2. What was the fair cash value of this Hobbs strip of land for depot purposes at that time?

Answer. I would not consider it worth any more for depot than for any other purposes.

Ques.3. If the land had belonged to you at that time, would you have conveyed it to the Railroad Company for depot purposes for

at that price?

Answer. It might have been that I would have given it to them like a great many others ~~ix~~ did, and I might have charged them for it

Ques.4. If you had been selling it to said railroad Company would ~~xa~~ you have sold it to them at that price?

Answer. I believe I would.

And further this witness saith not.

G W Wheeler

J.W.Ryan, another witness of lawful age, being first duly sworn, deposes as follows:

Ques.1. Are you acquainted with the strip of land conveyed by Mrs.L. M.Hobbs to the L.& N.R.R.Co.for depot purposes, the same being one hundred feet broad on the North side of the right of way strip formerly conveyed, and 50 wide on the South side of said right of way strip? If so, how long have you known it, and what has been your opportunities for learning its value?

Answer. I have known it for about seven years, I have walked about over it and looked at it. I cultivated a part of it for Mr. Wheeler when I was working for him.

Ques.2. What was the fair cash value of said land by the acre in August 1890?

Answer. Not over \$15.00 would be my judgement. There is a good deal of it that could not be used for anything unless it would be for quarrying stone.

Cross examination.

Ques.1. Did you ever buy and own any land?

Answer. Yes, sir.

Ques.2. Who did you buy it from, and where was it situated.

Answer. I bought it from Tom.Ely. It was down here by this Pridemoes mill near Jonesville.

Ques.3. How much did you buy and how much did you pay for it?

Answer. I do not exactly how much. I bought a house and lot. I suppose the lot contained bewtween a fourth and half acre. I got \$100.00 for it.

Ques.4. How much of this Hobbs land is cleared and has been in cultivation?

tivation? What kind of crop did you put in it?

Answer. I do not know exactly how much, but I suppose there is more that half of it. I do not know exactly how the depot lot lines run. I sowed oats and clover on it for Mr. Wheeler. It had been in corn the year before.

Ques. 5. How much corn or oats will it produce by the acre.

Answer. It did not produce very much oats. They were very short. I can only tell about the corn by the stalk. It was a very light stalk.

And further this deponent saith not.

J. W. Ryan
mark

Hiram Roberts, another witness of lawful age, being first duly sworn, deposes as follows:

Ques. 1. Are you acquainted with the strip of land conveyed by Mrs. L. M. Hobbs, to the L. & N. R. R. Co. The same being 100 wide on the north side of the right of way strip and 50 feet wide on the south side of said right of way?

Ans. I am. I have known it for 30 years or more. I live about one mile from it.

Ques. 2 What was the fair cash value of said strip of land by the acre in August 1890?

Ans. I suppose about \$20.00 per acre.

Cross-Examined

Ques. 1 Do you know what J. M. Wheeler priced his lands adjoining said land, about that time?

Ans. I do not. In all the talk I heard him have about it he did not propose to sell it.

Ques. 2 Do you know how he valued that land?

Ans. No Sir, I do not.

Ques. 3. Would you make any difference in the price of this land in selling it for depot purposes, or for ordinary farm purposes?

Answer. I would not think it would make the land worth any more.

Ques. 4. Would not the land command a larger price at that time for depot purposes?

Answer. If a man wanted the depot right there it might make the land

worth less.

Ques.5. At that time would you have sold this strip of land if it belonged to you to the Railroad Company at \$20.00 per acre?

Answer. If I had land surrounding it, and had wanted the depot there I reckon I would.

Ques.6. If you had not been interested in getting the depot there, would you have sold the ~~a~~ land at \$20.00 per acre?

Answer. I could not tell what I would have done then.

And further this deponent saith not.

Hiram X Roberto
mark

~~xxWheeler~~ C.R.Kesterson, another witness of lawful age being first duly sworn deposes as follows:

Ques.1. Are you acquainted with the strip of land conveyed by Mrs.L. M.Hobbs to the L & N.R.R.Co. for depot purposes?

Answer. I am.

Ques.2. What would have been the fair cash value of said strip of land by the acre in August 1890?

Answer. I think \$20.00 would have been a very good price for it.

Ques.3. State where Mr.Wheeler died.

Answer. He died at what is known as the Brent place.

Ques.4. Is that the same place where Mrs.Hobbs then lived?

Answer. It is.

Ques.5. If after the death of Mr.Wheeler, you as administrator of his estate applied to Mrs.Hobbs for the effects of Mr.Wheeler state what she said to you~~x~~ about an amount of gold then in her possession, and Mr.Wheeler's connection with that and interest in it, if she said anything.

Answer. I understood that Mr.Wheeler left some money there. I went to her and called on her for the money. She told me that Mr. Wheeler had no money there. I went back out in the yard ~~where~~ where Jim Wheeler and R.C.Brent were, and told them that she said there was no money there belonging to Mr.Wheeler. Bob remarked that there was money in the house belonging to him, and went in the house and brought it out. There was \$748.56, of which \$400.00 was in gold as I best recollect. I went in the house and asked her if there was not some more gold there

belonging to Mr.Wheeler? and she said yes that there was some more money there; that she had \$300.00 in gold, and that Allie Brent had \$290.00 in gold, money that they had taken in for keeping boarders; that Mr.Wheeler furnished the supplies and they did the cooking and he was to have half of it. I asked her if she would not turn me over Mr.Wheeler's part of it and she said no; that she would not let me have any more of it; that I would not get any more gold from there.

Ques.6. Did Mrs.Hobbs ever afterwards turn over to you any part of said \$300.00 in gold, of which she told you one half was Mr. Wheeler's as above stated by you?

Answer. She did not.

Cross-examined.

Ques.1. Who was present at the time Mrs.Hobbs said that half of the said \$300.00 was to go to Mr.Wheeler?

Answer. If any body was present it was Allie Brent, but I don't think there was anybody.

Ques.2. Please state why you have not proceeded as one of the administrators of Mr.Wheeler to collect his interest in said money, if you thought he had any interest?

Answer. I do not know that I have any reasons. I have done her just like I have with Bob Brent. It is negligence in me I reckon.

Ques.3. Have you not known all the time since you were administrator that Mrs.Hobbs held the claims that she has filed against this estate? and if so, why have you not proposed a settlement with her so as to adjust any claim to said money if you had any?

Answer. I do not know how long after Mr.Wheeler's death that she made said claim. It might have been at the time, and it might have been a year afterwards, I do not remember. I told her all along to bring suit on the claim for the land. The reason why I had not proposed a settlement was simply this: Mr.Wheeler was there when he died, and had been staying there. And I thought if Mrs.Hobbs never bothered us about the land matter, I would never bother her about ~~her~~ Mr.Wheeler's part of the \$300.00.

Ques.4. Why did you insist on her bringing suit for the land claim.

Answer. I do not know that I ever insisted on her bringing suit. She and Jerry would be after me about it, and I told them that I would not pay it, that they would have to bring suit on it. I do not know that I can tell the time. I guess it has been something like a year since I told them that I could not pay their claim for land unless they brought suit for it.

Ques.5. Did you not know yourself that Mrs.Hobbs conveyed this land to the Railroad Company at the instance and request of J.M. Wheeler,Sr. and that Mr.Wheeler was to pay for the land?

Answer. I knew that she ~~was~~ deeded it to the Company. I was a witness to the deed. But I did not know that Mr.Wheeler was to pay her for it.

Ques.6. How long was it after the death of Mr.Wheeler until she first presented the claim to you for payment?

Answer. I do not know that she ever presented the claim to me. She talked to me about it within a year after Mr.Wheeler's death, but I can not state the time definitely. It might have been a few days or it might have been nearly a year.

Ques.7. When she said she was going to keep the Wheeler part of the \$300.00,what reasons did she give for so doing?

Answer. She did not give any reasons at all.

Ques.8. Did she not on that occasion state that she and Allie Brent were to have what they made out of keeping boarders?

Answer. She stated that Mr.Wheeler furnished the provisions and they did the cooking and waiting, and were to have half of the proceeds.

Ques.9. Did she not state that Mr.Wheeler had already gotten his half of the money?

Answer. She did not.

~~Ques.10.~~ Re-examined.

Ques. 1 Please state as nearly as you can, when if ever, Mrs. Hobbs ever presented you with an account properly verified?

Ans. She never presented me such an account.

Ques. 2 Then if I understand you correctly, all that Mrs. Hobbs ever did was to call your attention to the fact that she claimed that Mr. Wheeler was due to her some amount for the land that she had conveyed to the L.& N.R.R.Co. for depot purposes?

6

~~QURE.~~

Ans.

Yes Sir:

And further this deponent saith not.

C. R. Kesterson

The depositions of Richard Risner taken at the Office of Duncan & Hyatt on the 13th day of February 1895, before H.A.W.

Skeen Commissioner, and intended to be read as evidence on behalf of the defendants ~~W.G.~~ W.G. Colson, Lelia Colson, Verdie Colson, James Colson and Nora Colson, in a chancery cause now pending in the Circuit Court of Lee County Va. in which J.M. Wheeler Jn. is complainant and C.R. Kesterson et als. are defendants.

Richard
W.J. Risner, a witness of lawful age, being first duly sworn, deposes and says:

Ques. 1. Please state your age, occupation and place of residence.

Answer. I will be 54 the 17th of June. I reside in Belle County Kentucky, I farm some little, but am a surveyor by trade.

Ques. 2. Please state what official position if any you have held in the County of Belle, Ky.

Answer. I was a Justice of the Peace, before ~~XXXXXXXXXXXX~~ I was County Surveyor. *in that part of Harlaw Co which was afterward*

Ques. 3. How long did you hold the position of County Surveyor for Belle County, Kentucky?

Answer. For eight years.

Ques. 4. Please state whether or not you were acquainted with J.M. Wheeler, Sr, decd., in his lifetime, and if so how long were you acquainted with him?

Answer. I was. From about 1860 up to the time of his death.

Ques. 5. Take the paper I hand you, and state whether or not that is your signature signed to said paper as attesting witness.

Answer. Yes sir. that is my signature, I placed it there too.

Ques. 6. What other signature is signed to said paper, as a witness

Answer. Calvin Hill.

Ques. 7. State whether or not you and the said Calvin Hill signed said paper as attesting witnesses thereto?

Answer. Yes sir, we did.

Ques. 8. What signature is that signed there by the word "seal"?

Answer. to said paper?

Answer. J.M. Wheeler.

Ques. 9. Please state whether or not J.M. Wheeler signed said paper

cut off and made as part of Belle

2.

- Ques.9 State whether or not you saw J.M. heeler sign said paper?
- Answer. I did.
- Ques.10. State whether or not J.M.Wheeler signed said paper in the presence of you and Calvin Hill, the subscribing witnesses thereto?
- Answer. He did.
- Ques.11. State whether or not you are the same Richard Risner that proved the execution of said writing or paper before the Clerk of Belle County, Kentucky for recordation?
- Answer. Yes sir, I am the same Richard Risner.
- Ques.12. Please take said paper and file it as a part of your deposition in this case marked "X".
- Answer. I file the same as requested.
- Ques.13. State whether or not Mr.J.M.Wheeler read said paper before he signed it?
- Answer. Yes sir, he did.
- Cross-examination.
- Ques.1. You state in answer to Ques.2.that you were a Justice of the Peace before you were County Surveyor. In what year were you elected County Surveyor and how long did you hold that office?
- Answer. I were elected in 1882 ~~and~~ in August of that year, and held it eight years.
- Ques.2. When were you elected Justice of the Peace and how long did you hold that office?
- Answer. I could not answer that question properly. It was just a piece of a term that I held it, but I suppose it was some time in seventies.
- Ques.3. You state in answer to question 4.that you became acquainted with Mr.Wheeler in about 1860. Where did Mr.Wheeler then live, and what business was he engaged in.
- Answer. He lived up about Mr.Jacob Susong's somewhere. He were engaged in selling goods.
- Ques.4. At what point was he then selling goods?
- Answer. About old Robert Ely's old dwelling, on the side of the road next to Cumberland Mountain.
- Ques.5. Was said store-house on the same side of the road ~~next~~ that

said Ely's dwelling house was on?

Answer. It was.

Ques.6. Was anybody in ~~an~~ partnership with Mr.Wheeler in the mercantile business at that time?

Answer. ~~It was my understanding~~ I do not know about other men's business. It was my understanding that J.M.Wheeler, M.S.Ball, ^{the} and young William Ely put up goods. I know that Mr.Ball and Mr.Wheeler both waited on me at the store.

Ques.7. Was this before or after the war?

Answer. It was before the war.

Ques.8. In Ques.5.you are handed a paper filed with your deposition and marked "X", and are asked if ~~xxx~~ that is your signature ~~to~~ to said paper as an attesting witness. You answer that it is, and that you placed it there too. Where were you at when you signed said paper as a witness?

Answer. At the top of the Cumberland Mountain where I call Cumberland Gap.

Ques.9. Who, besides yourself, was present.

Answer. Calvin Hill, John Rollins, James Rollins, W.G.Colson, and the old gentlemen that I always called Mat Wheeler.

Ques.10. When did you sign it?

Answer. It was in the winter of '91 I think. It was snowing.

Ques.11. Who asked you to sign said paper as a witness?

Answer. It occurs to my mind that it was Mr.Colson. It might have been both of them. They were together.

Ques.12. What time of day was it.

Answer. In the early part of the day, I would suppose about 10 o'clock.

Ques.13. Was said paper prepared there on top of the Mountain wherex you witnessed it?

Answer. It occurs to my mind that it was.

Ques.14. Did you, Calvin Hill, J.M.Wheeler and W.G.Colson go there together?

Answer. No sir.

Ques.15. Who, if any of you four, did go there together?

Answer. Mr.Colson and Mr.Wheeler came there together from this side

of the mountain.

Ques.16. How long had you been there when they came?

Answer. I had stayed there the night before.

Ques.17. Where is Calvin Hill?

Answer. I do not know anything about him. That was the first time I had ever seen him, and if I have ever seen him since I do not know it.

Ques.18. What was done with said paper after it was signed and witnessed?

Answer. I could not answer that for I do not know who took it,

Ques.19. When did you next see it after that?

Answer. At the Clerk's office. I could not answer when, it was some time afterwards.

Ques.20. What day of the week was it that this paper was signed as you have above described in your deposition?

Answer. It was too long back for me to answer. I could no say.

Ques.21. You state in answer to Ques.13.that Mr.Wheeler read said paper before he signed it. Did he read it out ~~xx~~ aloud or to himself?

Answer. He read it publicly.

Ques.14. How came you and Hill to sign said paper and not John Rol~~lx~~ lins and James Rollins also?

Answer. They said they could not write their names.

Ques.15. What were you all doing there on top of the mountain on ~~th~~ that day?

Answer. I went to see James Morison on land matter, and came back up to the top of the mountain, and presently Mr.Wheeler and Mr Colson came. Calvin Hill came driving a wagon, and he was asked the question whether he could write his name or not, and he said he could, and he come in and it was read and we witnessed it. James Rollins were living there at the top of the mountain, and the old man, his father, came to see him, I suppose I think he stayed all night there the night before.

Ques.16. Did James Morison live there?

Answer. James Morison lived at the foot of the mountain at his father's old houses.

Ques.17. Which left first, you or Wheeler and Colson?

Answer. I think Mr.Wheeler started first and came up the Virginia road. I think Me and Mr.Colson started together and I taken the Harlan road and he went to Middlesborough.

Ques.18. When Mr.Colson and Mr.Wheeler came there, did they come ~~down~~ up the Virginia road or did they come the Tennessee road that leads up from the town to the top of the maountain?

Answer. We were in the house and I know nothing only what they said. They stayed down there at the foot of the mountain, and come ~~u~~ up there that morning.

Ques.19. Who wrote said paper?

Answer. Mr.Colson.

Ques.20. Who furnished the paper, pen and ink.

Answer. I could not answer that. Mr.Colson was always prepared with the like in his saddle-pockets. He might have had it that day, but I could not say whether he had them that day.

Ques.21. Was said paper prepared in the house or out of doors, and if prepared in the house, which one of said houses?

Answer. It was prepared in the house, and in the dwelling ^{*which used to be an old stone-house*}.

Ques.22. ~~Ques.~~ Was there liquor kept at that place at that time?

Answer. Yes sir, there was a little saloon there out from the dwelling, where there was liquor kept.

Ques.23. Was James Rollins' wife there on the occasion of which you speaking have been of the preparation and signing of said paper?

Answer. She was there, of course. She was at home. They lived there.

Ques.24. Did you hear of the death of Mr.Wheeler pretty soon after it occurred?

Answer. I heard it pretty soon I reckon.

Ques.25. Were you called upon to prove said paper in the Clerk's office of Belle County Ky. before you heard of the death of Mr. Wheeler?

Answer. I could not answer. If I had heard anything about him being dead then it has slipped my recollection.

Ques.26. If Mr.Wheeler died on the 6th day of April 1891, how long was it after his death till you heard of it?

Answer. It was some time in the spring soon after his death. A gentleman by the name of John T. Peace who was working on this side of the mountain told me about Mr. Wheeler's death, and he spoke of it as a recent occurrence.

Ques. 27. Were you in Belle County pretty much all the time from January 7th 1891 to December 17th of that year.

Answer. Yes sir. I live about six miles from the Court-house.

Re- Examined

Question 1 The certificate of the Clerk of Bell County Court of Ky. shows that the execution of this paper was proved by you on the 17th day of December 1891, now please state and explain how come you to go before said Clerk to prove said paper?

Answer. I was a stirring on business. I would be at Pineville, and may be he would not be there. Then again he might be there and I would not. ~~At~~ Finally we met there together. Mr. Colson said to me, "Now I have got you, we have met up at last. You must go with me to the Clerk's office." We went to the Clerk's office and the clerks were very busy, and one of the Deputies attended to it. I do not now remember the name of said Deputy.

And further this deponent saith not.

Richard Rimmer

W.G. Colson, another witness of lawful age, being first duly sworn, deposes and says:

Ques. 1. Were you acquainted with James M. Wheeler, Sr. decd. If so, how long had you known him before his death?

Answer. I was. I had known him for about 18 years.

Ques. 2. What relationship was there, if any, between you and Mr. Wheeler?

Answer. He was my father-in-law.

Ques. 3. In Ques. 20 J.M. Wheeler states that you admitted to him that the four thousand dollars paid into the Woodson land was an advancement to your wife, Margaret. He also answers that he thought that the same admission was made as to the \$1000.00

~~Answer.~~ note from you, but did not know that you said any thing particularly about the said note. Now please state whether or not. you made such admissions to him about these two transactions at the time spoken of by him, and explain how this was.

Answer. In the conversation with him I made these statements: I got the \$1000.00 from Mr. Wheeler, and he paid \$4000.00 into the Woodson farm. Then there was some other conversation about the amount of rent that Clint was to pay for the home place. I asked him what he knew about it as to the amount and what he knew about any part of it having been paid, and he said he knew nothing at all. I think I remarked to him that Mr. Wheeler had told me that Clint was to pay him \$700.00 a year for it, and asked him what he knew about that. He said he did not know anything about that. I think that was about the substance of that conversation. In that conversation I

~~Ques. 4.~~ did not deny that I had borrowed the \$1000.00 from Mr. Wheeler and that Mr. Wheeler had paid \$4000.00 into the Woodson land; but I made no admissions that these two items were ^{advancements} ~~advancements~~ to my wife Margaret.

Ques. 4. Please take the book marked "Book 1." and explain the \$300.00 item against you on said book, and which has been mentioned in the deposition of J.M. Wheeler and C.R. Kesterson?

Answer. The \$300.00 item as mentioned in said book was money placed in my hands for which I was to account to J.C. Colson on a settlement between J.C. Colson and Mr. Wheeler, which I did. Mr. Wheeler had borrowed some money from J.C. Colson and there was a settlement pending between them.

Ques. 5. Please take the account~~x~~ filed with the deposition of C.R. Kesterson marked "Leaf of Account Book." and state whether or not you are indebted to the estate of J.M. Wheeler, Sr. decd. for said account or any part thereof. Explain the matter fully.

Answer. The date as it appears on said leaf Sept 5 188~~7~~ is incorrect. It should be Sept 5th 1887. Also Sept 27th 188~~7~~ should be 1887. I find on my books myself charged Sept. 6th 1887, 67 sides bacon, 2471 lbs., Sept 27th 1887, 81 sides, ^{all amounting \$525.80} 2309 lbs. Sept 17th 1887 I ~~paid~~ Mr. Wheeler miscellaneous items in the aggregate \$454.93. I see an item here where he charges

in John Colson transaction.
 me with \$13.00 interest overpaid. I have a very indistinct
 recollection of him saying something about that. [#] In looking
 over the matters he said he discovered that he had paid me too
 much interest. It may be correct. I do not know. January
 10th 1888 he credits me with ~~xxxxx~~ 19 head of cattle. That
 entry is not as of the date of the sale of the cattle. On
 the 29th day of Sept. 1887 I sold him 15 head of cattle at \$21.
 50 a head amounting to \$307.50. I was to keep those until in
 the spring or in the winter when I was to deliver them to him.
 I kept those until some time in January 1888, the date is not
 here given, when I sold him four more. These were worth \$80.00
 I kept these 19 cattle until March 31st 1888, the price for
 keeping which was \$48.00. He has an item of a bull, \$25.00
 charged on this account. This bull was exchanged with me for
 a steer independent of any other transaction. On January 29
 1889 an item appears, order from John Barnett. This order
 was given in contemplation of a purchase ^{by me} of land from Barnett.
 Instead of my buying the land the sale was made to J.M. Wheeler
 by Mr. Barnett. This item was included in the payment of to J.
^{by the estate of J.M. Wheeler died} M. Barnett. I received no benefit from the payment of said
 order. As appears of March 31st 1888 this account fails to
 show a credit due me 25 bu. herd grass-seed original cost \$
 20.00; ~~\$~~ 20. bu. Timothy seed original cost ~~\$85.00~~ ^{65.00}; 7 sacks
 \$1.25; cash and checks \$67.00. I believe that about corrects
 the account. There should appear on Mr. Wheeler's books a
 credit of \$229.00 subject to \$45.00 credit of one mower which
 I got from him, an item for taxes the amount of which I do not
 know. From a memorandum before me it is clear to be \$2.80,
 whether it is in excess of that amount I can't tell. I am
 probably chargeable also with \$20.00 in excess of \$1500.00 sent
 to Mollie Kesterson by me. There is also a small matter of
 settlement ~~between~~ between us on Norwood matter. I do not know the
 amount and have no memorandum with me of it. I am properly
 chargeable with a small amount I collected on a note ~~xxxxxxx~~
 in favor of Mr. Wheeler against R.M. Moss. I do not remember
 the amount. My recollection is that these two last mentioned
 items will about square.

As to how the matter of this account stands depends on a calculation.

Ques. 6. If you have any receipts or other written evidences of ~~these~~ these things file the same with this deposition, and also your accounts.

Answer. In support of ~~the~~ my account for corn as evidenced by exhibit "A" I file said exhibit. This statement is in Mr. Wheeler's own hand-write. The Green note, Mower, item for taxes and \$20.00 item in excess of \$1500.00 sent by me to Mollie Kesterson, are also evidenced by said exhibit, and is subsequent to January 1889. I also file an itemized memorandum found ~~connected~~ in connection with said transactions marked "B". In support of \$369.00 item of January 1st 1886 I file a check on the First National Bank of Stanford, Ky. marked "C". I will also file an abstract of my account which appears of record of ~~all~~ the transactions between us of which I have any record, marked exhibit "D". In support of item Feby. 19th \$95.00 paid J.M. Wheeler, also item March 1st 105.00, March 19th \$400.00, March 22nd \$400.00, Apl. 26th \$10.00, Nov. 12th ~~22x~~ \$99.00, Jan'y 15th \$370.00, ~~1887~~ all these in the year 1887, I ~~will file~~ file statement from the Bank of Williamsburg, Ky, marked "E". The checks canceled though Bank having been destroyed by fire. The various amounts paid evidenced by said statements are correct. On June 28th 1890 I paid J.M. Wheeler through the ~~people~~ People's Bank of Yellow Creek, \$250.00. I have the statement but not with me. I can file it hereafter if desired. That item, on reflection, does not appear on exhibit "D" filed with my deposition.

The Plaintiff objects to that part of the foregoing answer that speaks of or files the check marked exhibit "C" ~~also~~ because said check is prior in point of time to any item charged on the account marked "Leaf of Account Book." Plaintiff also objects to paper marked exhibit "D" because the same only purports to be a copy from the book, and the books themselves should be furnished, they being the best evidence. ~~It~~ Said paper "D" and all the items thereon prior to September 5th 1888 are excepted to because prior in point of time to any

item on the account aforesaid, filed with C.R.Kesterson's deposition marked "Leaf from Account Book." The items \$95.00 \$105.00, \$400.00 March 19th, \$400.00 March 22nd, \$10.00 April 26th, \$99.00 and \$370.00 are all objected to because prior to any item charged in said account.

Duncan & Hyatt, for Plff.

Ques.7. Please state whether or not the Books from which said copy of account which you file with your deposition are now in your possession, and can and will be produced by you if desired by the Commissioner.

Answer. I think they are and they can and will be produced if desired.

Ques.8. Does the account marked Leaf from Account Book, filed with C.R.Kesterson's deposition contain all the transactions between you and Mr.Wheeler during the times therein stated, and if not does your account show the additional transaction that should be given during said time?

Answer. That Leaf as I have heretofore stated is incorrect in the particulars that I have heretofore stated in my deposition, and does not show all the transactions during said period. My account shows the additional transactions, with one exception that I now remember. At Mr.Wheeler's instance I delivered to L.W.Lewis a certain amount of corn for which he paid me with the exception of \$ 15 bu. I have a memorandum of that which is not stated in exhibit "D". This is all that I now remember which said exhibit does not show fully, the amount of which is \$7.50.

Ques.9. After the death of Mr.Wheeler, when his administrators paid you the sum mentioned by them, as due you from said Wheeler's estate, did you consider that said estate was indebted to you to that extent or more?

Answer. I certainly did.

Ques.10. Take the paper which in hand you which purports to be a deed from you and your wife, Margaret, to Catherine Colson, and file the same as a part of your deposition in this case, and mark it "F"

Answer. ~~I file said copy of said de~~

Answer. I file a copy of said deed as requested and mark it "F".

The plaintiff objects to the deed of which the exhibit filed and marked "F" purports to be a copy because said deed is not germain ~~to~~ the questions at issue, and is wholly irrelevant and immaterial thereto.

Duncan & Hyatt, Attys. for pff.

Ques.11. I will also ask you to file as a part of your deposition a ~~copy~~ a paper which purports to be a copy of a deed from Catherine Colson to J.M.Wheeler, and mark it "G".

Answer. I will, and if I can find the original I will send that, and mark the same as requested.

This question and answer and the copy therein agreed to be filed is objected to for the same reasons as given in the last objection above.

Duncan & Hystt, Attys. for plff.

Ques.12. Please state at whose instance and direction the deed "E" was made, and also the deed "G" was made.

Answer. They were made at my instance.

Objected to becuae irrelevant and immaterial.

Duncan & Hyatt Attys for plff .

Ques.13. Under the transaction of making these deeds at your instance and request, what consideration, if any, was there between you and your mother, and your mother and J.M.Wheeler?

~~ANSWER.~~ The above question is objected to because wholly irrelevant and immaterial, and because the deeds themselves afford the best evidence of the consideration inducing the transaction.

Duncan & Hyatt, Attys. for plff

Answer. As between me and my mother the consideration was \$1000.00.
As between my mother and Mr. Wheeler the consideration was \$1000.00.
ing. This was ~~a~~ mutually understood between ~~me~~ us all and

~~Question~~ the note was subsequently delivered to me. I mean the \$16,000 note referred to in the depositions of C.R. Kesterson and J.M. Wheeler.

Ques.14. Have you since said transactions reimbursed your mother, Catherine Colson, for the ~~\$1000.00~~ said \$1000.00.

Obj. The above question and any answer thereto are objected to

because irrelevant and immaterial.

Duncan & Hyatt, Attys. for plff.

Answer. I have.

Ques. 15. Please state who were the purchasers ~~of~~ from D.K. Young and wife of the ~~W~~ land known as the Woodson land in this suit, what were the interests purchased by each, and amount paid by each of said purchasers for said land.

Answer. Myself and J.M. Wheeler were the purchasers of said land. Mr. Wheeler paid \$4000.00 into the land, and I paid \$5375.00. We were not equal purchasers; each was interested to the amount he paid into the land.

Ques. 16. Who is now in the possession of the notes executed by the purchasers for the purchase price of this land.

Answer. I have them in my possession.

Ques. 17. Please file said notes or a copy thereof, and explain the receipts of payments endorsed thereon, if any.

Answer. I file copies of said notes herewith marked "H" 1, 2, 3, 4, & 5 respectively. The note marked "H 1" \$850.00 was paid by Mr. Wheeler, July 9th 1886; the balance of said note was paid me Aug. 27th 1886, and I paid \$17.00 over the amount necessary to pay said note as is shown by the endorsement on the note marked "H 2". Note "H 2" was paid by me July 6th 1887. ~~Noted H 3~~
~~xxxxpaid~~ On ~~Oct~~ note "H 3." Mr. Wheeler paid \$900.00 Oct. 9th 1887, and I paid the balance May 9th 1888. On note "H 4." Mr. Wheeler paid \$961.95 Feby. 5th 1889. The remainder of the note was paid by me, or rather Mr. Wheeler paid for me \$330.00 for which I accounted to him. On note "H. 5." Mr. Wheeler paid \$995.00 Sept. 30th 1889, and the balance of said note was paid by me. But while note "H. 2." was paid by me as stated above, Mr. Wheeler furnished the money to pay his pro rata part of it, which would have been at that date, principal and interest about \$887.60.

Ques. 18. State whether or not this purchase as to Mr. Wheeler was for the benefit of your wife, Margaret Colson?

Answer. As I said before we were joint purchasers of the land. ~~There~~
There was something said about it in connection with my wife

but at the time the title bond was executed, it was executed to myself and to Mr. Wheeler. The bond has been lifted by Mr. Young.

Ques. 19. Please state who procured the deed, and at whose direction in was the deed made ~~xx~~ and the manner in which it was made.

Answer. I procured the deed. It was made at the direction of myself and Mr. Wheeler. In the manner in which it was made it was made at my direction. Mr. Wheeler was not present. Mr. Wheeler left it to me to have the deed made in the manner in which it was made.

Ques. 20. How was the conveyance made by D.K. Young and wife to the land?

Answer. My recollection is that I took a life estate and the children the remainder, to ~~the~~ the extent of the Wheeler interest. The other interest was conveyed to me. The deed will show, a copy of which I will file marked "I".

Ques. 21. State whether or not the \$1000.00 mentioned in this suit for which you executed your note to J.M. Wheeler, and filed as an exhibit with complainants bill, was a loan to you as an individual?

Answer. It was an individual loan to me. ~~xx~~ I remember I was purchasing some land in Ky., and the note states that a lien is retained on the land for the payment of the money.

Ques. 22. Please state whether or ~~not~~ the said \$1000.00 note and the said \$4000.00 paid by J.M. Wheeler to D.K. Young into the Woodson land ~~are~~ is the same identical \$1000.00 note, and the amount as paid by J.M. Wheeler to D.K. Young on ~~xxxxxx~~ Woodson land in Virginia, mentioned and referred to in the paper signed by J.M. Wheeler in exhibit "X" filed with the deposition in this case of Richard Risner, and which purports to be a deed from the said J.M. Wheeler to W.G. Colson and Trustee?

The foregoing question and any answer thereto is objected to as evidence in this case, because the deed ~~from~~ D.K. Young and wife to the Woodson land had been made before the paper marked "X" and filed with the deposition of Richard Risner, and which purports to be ~~a~~ a deed from J.M. Wheeler to W.G. Colson, was executed. The rights of the heirs or children of Mary

garet Colson had then vested and no transaction had between Mr Wheeler and Mr. Colson, the parties to said paper, marked "X" could change or in any way affect the rights of said children or heirs, or change the nature of the payment of said money into said land, and the purchase of said land for the benefit of Margaret Colson.

Answer. They are. That is the ^{only} \$1000.00 note I ever executed to said ~~Ques. 22.~~ Wheeler. *Duncan & Hyatt Attys*

Ques. 23. State whether or not you were entitled to have the said ^{note} \$1000.00 delivered up to you?

Answer. Yes sir, that is what is my conception of a right, as I had settled for the \$1000.00 note and the \$4000.00.

Ques. 24. Please state why Mr. Wheeler left it to you to have the Young deed made in the manner in which you had it made, and why you so had the deed made to yourself and your children?

Answer. *as to the wheeler interest* Objected to because irrelevant and immaterial, and because the deed itself is the best evidence not only of what it contains, but of the reasons why it is so made.

Duncan & Hyatt, Attys. for plff.

Answer. ^{the legal} Well, he held title to all the property I had in Kentucky. I told him he could make himself whole out of that property, and I would go and get the deed from Young and we would arrange the matter. The deed was made from Young at my instance as heretofore stated. He subsequently reconveyed to me the property set out in the deed marked "X" with Risner's deposition making the reservation as there in provided, for the said \$1000.00 note and for the said \$4000.00 paid into the Woodson land. At the same time of the execution of said deed "X" he executed a ~~taxed~~ confirmatory deed to ~~in~~ some property I had sold to the Pine Mountain Iron & Coal Company. I had contracted it and it was necessary before I could complete the transaction to get a confirmatory deed from him. We met at the Gap and the deed was made pursuant to our previous arrangement and agreement.

The foregoing answer is objected to because it is in no way responsive to the question asked, and for the same reason

and said answer in so far as it undertakes to detail what was done by and between witness and Mr. Wheeler after the execution of the deed filed marked "I" from D.K. Young and wife, ~~said~~ ~~answer~~ is objected to for the reasons stated in the objection to Ques. 22.

Duncan & Hyatt, Atty. for plff.

Ques. 23. Please take the paper filed with C.R. Kesterson's deposition marked agreement of advancements and state whether or not you made the addition spoken of by J.M. Wheeler in his deposition after he, or any of the other parties thereto had signed the same?

Answer. I do not think I did. My impression is that I prepared one paper, and ~~xx~~ we talked about the matter, and Jim talked about leaving, and then I told him we had better make an affidavit, probably Jim may have signed this paper and started to leave, but I think at my suggestion he stayed until we made an affidavit to it, and he did so. He stated that he had received nothing and Mr. Kesterson that he had ~~received~~ so much, and I as set forth in this paper. Mr. Kesterson remarked that he did not know whether the statements I had made would satisfy the Commissioner or not, and I told him he could send it up ~~x~~ and see that that was the way the matter stood. He kept the paper in his possession and I did not see it until I came here to attend the taking of this account. Mr. Kesterson and wife signed said paper and it was left in their possession.

Cross-examination.

Ques. 1. Will you please state if said paper was prepared just as it is now, I mean the body of it, before it was signed by any of the parties, why it is that there is so much space between the last word in the body of said instrument, and the names? signed thereto?

Answer. Mr. Wheeler was anxious to get away. I think he signed it and started to go away, before the paper was finished. The paper was afterwards finished, and I think I called him back to qualify to it. I think it was just as it is now when he

qualified ~~xx~~ to it. His signing it before it was finished accounts for the space between said names and the last word of the paper.

Ques.2. Did you leave the paper with Mr.Kesterson and his wife or either one of them, and had they signed it at all when you left Cumberland Gap?

Answer. My impression is that I left it with C.R.Kesterson, but my recollection is not very positive on that point. But I am sure the paper was signed by both Mr.and Mrs.Kesterson before I left there.

Ques.3. By way of refreshing your memory I will ask you if the amounts of advancements as set out in said paper ~~x~~ down to the place commencing "Also W.G.Colson &c.--" and in that condition it was signed by Mr.Wheeler, and the statement therein contained that he had received no advancements sworn to by him, then afterwards you wrote that clause beginning "Also W.G.Colson conveyed &c." on down to the close of the instrument, that you then carried it before Frank White Swore to ~~xx~~ it and left it with the said White, to get the signatures of Mr.and Mrs. Kesterson?

Answer. ~~ANSWER~~. No. It was not written down, according to my impression, beyond the statement made as to J.M.Wheeler when he signed it. My impression is that it was written out as it is now before he was sworn to it. I did not sign and leave it with Frank White to get the signatures of Mr.and Mrs.Kesterson. My recollection is that this paper was signed by C.R.Kesterson ~~xx~~ and Mollie Kesterson and that I saw them qualified to it before Frank White.

Ques.4. In answer to Ques.4.of your examination in chief you say; that the \$300.00 item mentioned in Book 1. was placed in your hands and for which you was to account to J.C.Colson ~~and~~ Mr. Wheeler; that Mr.Wheeler had borrowed some money from J.C.Colson. Please state when you settled said \$300.00 with J.C. Colson and did you take a receipt for the same, and if so, what did you do with it. And if you have it in your possession please file it.

Answer. I can not remember the time I settled said \$300.00 with J. C. Colson. I can not tell about ~~that~~ whether I took J. C. Colson's receipt for same. I remember Mr. Wheeler, J. C. Colson and myself settled the matter among us. A long time afterwards Mr. Wheeler mentioned to me something about it.

Ques. 5. State as near as you can the ~~times~~ number of years before
Answer Mr. Wheeler's death.

I can't tell. It might have been some three, four or five years.

Ques. 6. Please examine the account of J. M. Wheeler against yourself on the ~~the~~ paper marked "Leaf of Account Book" and state if there are any items there charged to you, which you did not get or any credits to which you ought to be entitled that are not on said paper?

Answer. There is a little discrepancy between us about the number of sides of bacon. He has it 68 while I only received 67, he charged me 11 1/2 and I have it 11 cts. He also has me charged here with a bull for which I exchanged a steer. As stated in my answer to Ques. 5. on Sept 17th 1887 I paid Mr. Wheeler in miscellaneous items \$454.93 which ought to be credited to me on our general dealings somewhere.

Ques. 7. In question 13. you were asked "Under the transaction of making these deeds at your instatce and request, what consideration if any, was there between you and your mother, and your mother and J. M. Wheeler." you answer "As between me and ~~my~~ my mother the consideration was \$1000.00. As between my mother and Mr. Wheeler the consideration was nothing." ~~Did not~~
~~XXXXXX~~ Does not the deed from you to your mother correctly recite the consideration?

Answer. It correcttly recites the nominal consideration. The actual and only consideration was \$1000.00. *from my mother*

Ques. 8. Was not the note described in said deed for \$17,000.00 to be paid one half in six months and one half in twelve months executed to you by your mother at the time of the making of this deed?

Answer. My recollection is that it was, and was for the sum of

\$16,000.00 instead of \$17,000.00.

Ques.9. The deed of your mother to J.M.Wheeler not having yet been filed by you, I want you to state if you can remember the date of that deed.

Answer. I do not remember the date of said deed, but the deed was executed some time after the deed was made to mother.

Ques.10. Was Mr.Wheeler present when either of said deeds, that is, the deed of yourself to your mother, and the deed from your mother to him, was executed?

Answer. I can't say that he was. It occurs to me that he was there and got the \$16,000. note. It was all transacted through me. and he was familiar with all the facts.

Ques.11. What did you do with the \$16,000.00 note executed ~~x~~ to you by your mother?

Answer. I assigned said note or notes to J.M.Wheeler, and I now remember that he was present when the deed was made to him or about that time, and I then delivered said note to him.

Ques.12. Said note remained in Mr.Wheeler's possession till after his death and was delivered to you by his administrators, was it not?

Answer. It was returned to me by Mr.Kesterson, one of the administrators.

Ques.14. What was the fair ~~valuation~~ cash value of the lands described in the deed from yourself to your mother, at the date of that conveyance?

Answer. At that time I thought they were probably worth \$17,000.00.

Ques.15. In the deed marked "X" and filed with Risner's deposition J.M.Wheeler purports to convey to you the following described tract or tracts of land lying and being, situated in the County of Bell, State of Kentucky, namely, being all the land conveyed by W.G.Colson to Catherine Colson under deed dated January 1st 1888, and deed by Catherine Colson to J.M.Wheeler under ~~deed of~~ date _____ also all the lands conveyed by deed from W.G.Colson to J.M.Wheeler, dated Sept 1st 1890, also at other times Jany.1st 1888 &c. What lands were conveyed by you to Mr.Wheeler by deed of September 1st 1890? and the deed

made at other times? January 1st 1888 &c.?

Answer. The idea was just whatever lands I owned at those respective dates. ~~The~~ I can not ennumerate the tracts at present.

Ques.16. In said paper marked "X" there is this paragraph: "I hereby quit cliam to said Colson all lands heretofore conveyed by him to anybody, and confirm all such sales and hereby release all my claim to any of said lands together with all the appurtenances thereunto belonging in the way of liens or otherwise." Now what part of the lands described in said deed of yourself to Catherine ^{Colson} had you disposed of, which that quit cliam clause was intended to cover?

Answer. I think I had sold the ~~XXXXX~~ Spencer King & Craig tract, the J.R.Mason tract, This is all that I now remember that is intended to be covered by that clause. I had also sold the town lot in Pineville, Ky., formerly occupied by myself, and the Thomas Hoskins tract, but they are covered by another clause in said deed.

Ques.17. Will you please take these two deeds and tell me as nearly as you can what tracts of land are conveyed to you in trust for your children in the paper marked "X" as aforesaid.

Answer. All that are not reserved in said deed "X" ^{or} ~~and~~ excepted ~~from~~ ^{Colson} from its provisions which ~~are~~ are described in the Catherine ^{Colson} deed of Jany.1st 1888, ~~XXXXX~~ and the other deeds referred to in said deed "X".

Ques.18. What was the fair cash value on the 8th day of January 1891 of the lands conveyed to you in said paper "X" in trust for ~~XXXX~~ Mr.Wheeler's grand children, to-wit, Nora, James M.Vern ~~die~~ die, and Lelia Colson?

Answer. I could not exactly tell, for a particular discription of the lands I refer to the deed from myself to Catherine Colson and the deed from said Wheeler to me the value is hard to estimate, they might have been worth ~~\$200~~ \$2000.00, they may have been worth more, they may have been worth less.

Qes. 19, What was the fair cash value of the lands which Mr.Wheeler reserved in said conveyance marked "X" with Risner's deposition

Ans. That is hard to tell, they might have been worth \$5000.00 or more, I considered them worth that much at that time.

Qes. 20 What was the amount of lands so reserved by Mr. Wheeler in said deed? I mean the number of acres?

Ans. 535 acres.

Qes. 21 What was the acreage of that conveyed in said deed, in trust, for the said Nora, James M. Verdie and Lelia Colson?

Ans. 1250 acres, perhaps a tract containing 300 acres which I have included in said 1250 acres may have been sold before that time, of this I am not sure, but if it had then the amount should be 950 acres instead of 1250.

Qes. 22 How is it that said ~~535~~ 535 acres reserved by said Wheeler was then worth \$5000.00 or more and said 1250, or 950, acres was only worth \$2000.00

Ans. 23 It is due to the relative location of the land.

Ques. 23 What was, and is the character of said 535 acres and where is it located, and what is its peculiar location that causes it to be so valuable?

Ans. It is coal and timber lands, located in about two and one half or three miles from the limits of the City of Middlesborough.

Ques. 22 What is the location of the 1250 acres or 950 which ever it is, and what is there in the location of said lands that detracts so materially from their value?

Ans. The 300 acres is situated in the edge of Harlan County, about 20 or 25 miles from the railroad, the 4, 200 acre tracts of which a half was conveyed, are about 18 miles from Pineville I do not know whether these lands have coal on them or not, the 150 acre John Hoskins tract is in Bell County east of rocky face mountain, some 4 miles from the railroad, the John Mary tract of 100 acres is located on Candy mountain and is about 5 miles from Middlesborough, the Smith tract of 200 acres is located in the ^{same locality, 200 acres} as the four tracts above named and is some 13 miles from Pineville.

Ques. 25 In answer to question 23 you state that in your conception of right that you thought the \$1000 note ought to be delivered up to you, as it was settled in the transaction when said deed filed "X" was made, then why was it not delivered up to you at that time?

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Ans. The note was not there at the time.

~~Where~~ was

Que. 26 Where was said paper executed?

Ans. It was executed at the place described by Risner in his deposition. In the house occupied by James Rollins partly as a saloon and partly as a dwelling house, at the top of the mountain at Cumberland Gap.

Ques. 27 Where had you and Mr. Wheeler agreed to make said transaction I mean where were you when you agreed on the terms of said transaction?

Ans. I do not remember the place, it was about the time I went to Youngs to get the deed for the Woodson land.

Ques. 28 Where had you and Mr. Wheeler staid the night before said paper was executed?

Ans. I think we both staid ^{yes} at Mr. Kesterson's in the town of Cumberland Gap. I know Mr. Wheeler staid there and my best impression is, that I also staid ^{yes} there.

Ques. 29 Why was not said paper drawn up and executed in the town of Cumberland Gap where there were notaries who could have taken the acknowledgement of Mr. Wheeler to it?

Ans. I think we talked that matter over there, and looked for a clerk or deputy Clerk, Notaries do not take acknowledgements in Kentucky. Of deeds. I got two blank deeds from Mr. C.H. Rogers and we then started and went on toward Middlesborough, thinking that perhaps we would have to go there. And on our way I said to Mr. Wheeler that if we could find two witnesses who could write their names we would not have to go on to Middlesborough, that we could make that do, and when we got to the top of the mountain we went into Rollins place and found Richard Risner Jim Rollins and perhaps others, I asked Jim if he could write he said he could not to do any good, that he would have to make his mark, we could only find the one witness who could write, and the remark was made by some one present that perhaps while the papers were being prepared, that some one might come along who could write, and I then prepared the papers, and while doing so a man came along that I then learn-

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ed to be Calvin Hill who with Risner witnessed said deed.

Ques. 30

Was there not men in ~~Zumb~~ the town of Cumberland Gap who could write, and could said deed not have been witnessed by them there as well as any where else?

Ans.

There were men there who could write but I did not think the deed could be prepared there as well as in Kentucky. I mean executed.

Ques.

31

It was executed in Virginia was it not?

Ans.

No it was executed in Kentucky, a part of said house is in Kentucky and we went into that part.

Ques. 32

How often did you see Mr. Wheeler after the execution of said paper marked "X"

Ans.

I do not remember, I was there with him several days before he died, and saw him perhaps at other times, I know I was at ~~his place~~ *his place, that is at Robert Brumley's place near the depot* and with him a short time before he got sick, I also saw him once in Kentucky on the train on ~~his~~ way to Louisville

Quesl 33

Why did you not get, if you were entitled to it, said ~~deed~~ \$1000.00 note, either while you were staying with him while he was sick, or when you were at his house, just before he got sick. And also, why did you not get the \$16000.00 ^{note} ~~of~~ from him before his death?

Ans.

I do not know any particular reason for it, I thought the recital in the deed was conclusive and I do not know that I thought about getting said notes. ~~Taxfact~~

Ques. 34

There is no recital in the deed in reference to the \$16000.00 note, why did you not get it?

Ans.

I know no particular reason for it, I don't know that we talked anything about it. I just supposed that his folks knew all about the fact of his holding the title to all my property and just how it was. I owed my mother \$1000.00 and was otherwise encumbered, I made her the deed telling her that it would fully protect her and I thought also my property, she executed to me the note for \$16000.00 and afterwards fearing that my creditors might get after it in her hands I had her to convey the land to Mr. Wheeler and I assigned said note to him, he never paid me anything towards the note, nor did he pay any-

thing to my mother towards said land, he was only an accommodation holder for me both of said lands and said note. He never paid me anything on said lands. It was only for delay, I have since paid my mother said \$1000.00 and settled with my other creditors. The ~~trust~~ ^{trust} clause in said deed was made at my instance, that is the deed marked "X"

Ques. 35

In question 18 of your examination in chief, you are asked to "state whether or not this purchase as to Mr. Wheeler was for the benefit of your wife Margaret Colson" to which you answer, "as I said before we were joint purchasers of of the land. There was something said about it in connection with my wife, but at the the time the title bond was executed, it was executed to myself and Mr Wheeler, now at the time said purchase was made, the direct understanding that the purchase in so far as Mr. Wheeler was concerned was for the benefit of Margaret Colson?"

Ans.

I remember the conversation had, he said I have tried to get Clint to help me buy this place, and said it is my intention to give it to Mag, meaning my wife. When we got to Morison's where the title bond was executed, I asked him how the bond should be taken he said take to you and myself, we do not know how the thing may yet turn out we are buying this land. I don't know what I will do about it.

Qes. 36

Was the arrangement that your wife Margaret Colson was to have the Woodson land to the extent of the money paid into it by Mr. Wheeler, ever changed or abrogated in the lifetime of the said Margaret?

Ans.

This question is objected to because it assumes facts to be proved that are not proved.

B.H. SEwell atty &c.

Ans.

I will make my answer to the next preceding question as my answer to this question, and will say that the matter stood that way up to the time we talked the matter over when I was arranging to go to Young's. That is the only arrangement.

~~When~~ Qes. 37 When you went to Young's your wife was dead was she not

Ans.

I think she was.

Ques. 38

Don't you know she was?

Ans.

I am very confident she was

Ques. W 399 Is not the sum paid into the Woodson land a proper charge as an advancement, against the heirs of Margaret Colson?

Ans. I don't think so. For the reasons heretofore given in exhibit "X"

Que. 40 Did you not here in the town of Jonesville in presence of C.E. Kesterson, James M. Wheeler Jn. and John A.G. Hyatt ~~nam~~ since the death of James M. Wheeler Sen. admit and state that the sum paid by Mr. Wheeler into the Woodson land was a proper charge as an advancement to your late wife Margaret?

Ans. I dont think I did, in my conversation I did not deny getting the \$1000.00 or that \$4000.00 was paid into the Woodson land by Mr. Wheeler, I said that all the time.

Ques. How much, if anything have you received, from the Administrators of James M. Wheeler deceased, for your children?

Ans. Nothing. unless the rents received ~~behave~~ as stated below is a proper charge against them.

Ques. 42 Did not you receive the rents or a part of the rents for the year 1892, off the lands laid off and assigned to your children

Ans. ~~AI~~ I did receive a part of the rents for said year, the amount of which I do not now remember, but I can and will get it and will report it, as it is filed with my guardian settlement.

Ques. I hand you a note executed to James M. Wheeler ^{by R.E. Crockett & wife} for \$96.00 and dated January 1st 1889, have you collected said note or in any way secured it?

Ans. I have secured ^{it} by including ^{it} with a debt I have against said Crockett, by taking a deed of trust.

Re-Examined.

Ques. Explain why the deed from D.K. Young and wife has not been recorded.

Ans. After I returned with the deed I found that the seal had not been affixed to ~~xxxxxx~~ the signatures, and I have been aiming to get them affixed.

And further this deponent saith not.

J. G. Lescom

The deposition of John A.G.Hyatt taken on the 15th day of February 1895. in rebuttal.

J.A.G.Hyatt awitness of lawful age being duly swon deposes and says:

Ques. 1 Are you acquainted with W.G.Colson, if so how long have you known him?

Ans. Iam acquainted with Mr. Colson. I have known him about three years I reckon.

Ques. 2. Please state if here in the town of Jonesville, sometime since the death of James M.Wheeler, and in the presence of yourself, James M. Wheeler Jn.and C.R.Kesterson, Mr. W.G.Colson did not admit and state that James M.Wheeler paid into the Woodson land the sum of \$4000.00, and that said sum was a proper charge as an advancement against Margaret Colson.

xxx

xxx.

xxxx

Ans. These gentlemen came before me at one time, as commissioner of accounts, I do not remember the exact time, but it was after the Administrators of said James M. Wheeler deceased had made a partial settlement of their account, and for the purpose, as I understood of settling the subject of advancements made by Mr. Wheeler in his lifetime to his various heirs, I told them as I remember that they might by written statement settle said advancements, at least I made this suggestion to them, Whereupon I proceeded to make for them said written statement, It was my understanding there between the parties that Mr. James M. Wheeler Jn. had been advanced nothing, that Mr. Kestersons wife had been advanced \$3500.00, and that Mr.Colson's wife and heirs had been advanced \$4000.00 in the price of that land, I further suggested to them in order to protect Mr. Colson as guardian for his heirs, and to make it binding that it would be well for them to swear to said advancements.

Ques. Did Mr. Colson at that time dissent in any way from said \$4000 as a proper charge against the heirs of Margaret Colson?

xxxx

The foregoing question is objected to because no foundation because no foundation is laid for it

B.H.Sewell Atty &c.

Ans. He did not that I heard of, He did not in my presence.
I wrote it down that way, it seemed to be agreeable to them
every way. That is my remembrance of it.

Ques. At that time did Mr. Colson claim that he had settled that matter with Mr. Wheeler in his lifetime

Ans. He did not that I heard of, not in my presence

The foregoing question and answer are objected to because no foundation is laid for said question.

B.H. Sewell Atty &c.

In this connection the Counsel for the plaintiff offered to recall Mr. Colson who was still present for the purpose of asking said question and laying said foundation if not already sufficiently laid, but Mr Colson said he cared nothing about it.

Ques. Are you certain that \$3500.00 was the amount given by Mr. Kesterson as having been received by his wife, or was it not \$2400.00, Cash \$1500.00 and rents \$900.00?

Ans. I am not positive about this, I cant remember exactly, but I remember two or three items being mentioned and it strikes me that it amounted to \$3500.00.

Que. 1 Cross-Examined

Was any paper then prepared by you signed by the parties?

Ans I dont think it was.

Que. Did the parties afterwards prepare and send you a paper?

Ans. I received a paper, I dont know who prepared it.

Ques. 2 Is the paper filed with C.R. Kesterson's deposition marked "agreement of Advancements" the paper if so who sent it to you?

Ans. This is the paper but I cant say who sent it to me.

Ques. What did you do with said paper?

The foregoing question as well as the one just preceding it is objected because no part of a cross-examination and because no foundation is laid for it.

Duncan & Hyatt

Ans.

3

Ans. According to my best recollection I sent it to Mr. Kesterson, he however says that I sent it to James M. Wheeler, but I considered them both as about the same.

The part of said answer which details what Mr. Kesterson says is objected by depts Colson and Children.

B.H. Sewell atty

Ques. As Commissioner of accounts did you ever settle any question of advancements between these parties by that paper sent you or in any other way.

Ans. I did not.

And further this deponent saith not.

Joseph Hyatt

(22 to 24)

*# Lee Gibson, Ananda Morrison, John Susong
Mollie Kesterson, J.M. Wheeler and C.F. Duncan.*

J.M.Wheeler,

Plaintiff.

vs.

In Chancery.

C.R.Kesterson et als.

Defendants.

The depositions of H.J.Morgan, A.J.Susong, John
Susong, M.S. Ball, D.C. Willis, and Hoskins
C.R. Kesterson ~~X~~, taken at the office of Duncan & Hyatt,
in Jonesville, Va., on the 11th day of February 1895, before
me, H.A.W.Skeen, Special Commissioner appointed for the purpose
of taking an account in the above styled cause, which depositions
are intended as evidence on behalf of the plaintiff in
said cause.

Present:- J.M.Wheeler, plff. in person and by his counsel,

Duncan & Hyatt,

C.R.Kesterson and Mollie Kesterson, his wife, and
their counsel, Duncan & Hyatt,

W.G.Colson, in his own right and as guardian ad
litem for the infant defendants, Nora, James
Lelia and Verdie Colson, and B.H.Sewell, Atty.
for said Colson.

The witness, H.J.Morgan, being first duly sworn, deposes
as follows:

Ques. 1. First question for plaintiff.--Were you acquainted with the
late James M.Wheeler, deceased, in his life time? If so how
long did you know him?

Answer.--I was acquainted with him. While I do not recoll
lect the exact number of years I knew him, I knew him the last
twenty-five years of his life at least.

2nd.Ques for same.--If Mr.Wheeler ever made any statements
to you of advancements made by him to his children or any one
of them, please state what he said about it, and when it was,
as nearly as you can?

Ans.--He talked to me frequently about his private affairs
perhaps as much so as to almost any other person, and on more
than one occasion, he spoke to me about advancements which he
had made or intended to make to his daughter, Margaret, and he

also said he had made or intended to make his daughter, Mollie a certain amount of advancements, but the amount thereof, if ~~he~~ he stated, I do not now remember. My recollection is that he said he had been renting C.R. Kesterson, the husband of the ~~and~~ said Mollie, some land and taking his notes therefor, and that he never expected to collect the notes, but expected to surrender them and treat them as an advancement to the said Mollie, And my best recollection is that the amount ranged somewhere ~~in~~ between twelve and twenty-five hundred dollars, and for ought I know, there may have been other matters included in this estimate aside from the rent, but if there was I do not recollect what it was. I remember distinctly that he said to me on more than one ~~x~~ occasion that he would or had paid one half towards the Woodson land which cost as I understood \$3000.00 and that he ~~had~~^{had} intended the one half of that land to be conveyed to his daughter, Margaret, as an advancement. He at the same time spoke to me something about some debts he had on Mr. W.G. Colson and some dealings between them, and he expected to treat such debts as an advancement to his daughter, Margaret, but if he stated the amount or the nature of such debts and dealings, I have now forgotten it. As to the time, I cannot now state when it was. My best recollection is that it was ~~in~~ some time between May 1889 and the time of his death.

The above question and answer thereto ~~and~~ objected to in so far as they effect the rights of Margaret Colson, W.G. Colson, or their children mentioned as defendants in this case; first, because no advancement is ~~is~~ shown to be made to them or either of them; and second, because declarations of the donor of any advancements, if any had been made, do not accompany the gift. Subsequent declarations are inadmissible to show ^{certain} such intention, and no ~~time~~ is shown, and declarations of intention must be at the time of the gift, if any advancement was made.

And further this deponent saith not.

Henry J. Morgan

See Section
on Objections

A.J.Susong, another witness of lawful age, being first duly sworn, deposes as follows:

First question for plaintiff.--Were you acquainted with James M.Wheeler, Sr. in his lifetime, if so how long had you known him?

Answer.--I was acquainted with him and had known him ever since he was a boy.

Second question for same.--If there was any relationship between you and Mr.Wheeler, please state it.

Answer.--I reckon there was a littlex blood relationship, and then he married my sister.

Third question for same.--If Mr.Wheeler ever made any ~~xxx~~ statements to you of advancements made by him to his children or any one of them, please state what he said about it, and when it was as nearly as you can tell?

Answer.--On one occasion he and I were together and he ~~told~~ told me he had let W.G.Colson have a thousand dollars to pay into some land ~~xx~~ in Kentucky; that he had taken his note for it, ~~but~~ intended it as an advancement. I asked him why he took the note, and he said to show the amount. I do not remember the time this talk was had. It was shortly after the Kentucky land was bought, but I do not remember exactly when that was. He in another conversation told me that he and Mr. Colson had bought the Woodson land at \$8000.00; that he had paid one half and Colson the other, but if he told me what he intended to do with his half, I do not remember it. ~~He said they had bought the Woodson land in partnership.~~

The same objection and exception to the foregoing question and answer are made that were made to the question and answer of H.J.Morgan.

B.H.Sewell, for deft.Colson and children.

ques.4. State if you know what ~~xxxxxx~~ were the terms under which C.R.Kesterson occupied the home place of J.M.Wheeler, decd.2, that is, the amount he was to pay per year?

Answer. He talked to me about Mr.Kesterson renting said land, and said that they disagreed about the price that Kesterson was to

4.

pay him, and he said that he did not know whether Mr.Kesterson would take it or not, but he afterwards told me that Mr.Kesterson had taken it, but did not tell me the price as I remember it.

Ques. 5. Did Mr.Wheeler ever tell you whether Mr.Kesterson had paid the rent or any part of it for the years which he occupied said land?

Answer. I do not recollect.

Ques. 6. Do you know how many years Mr.Kesterson occupied said land?

Answer. I think about five years.

Ques. 7. What would have been the fair cash rental value of said land by the year while Mr.Kesterson occupied it?

Answer. I ~~deem~~ should think \$500.00 would have been a very good price for it, if I had had it to have paid.

~~Examine~~- Cross-examined.

Ques.1. by defendant Colson's Counsel.--Are you acquainted with the place known as the Ely place that J.M.Wheeler,Sr.decd. rented and if so how much was in that boundary?

Ans. I am acquainted with said land, was raised and have always lived on adjoining farm with it. I can not tell the number of acres, but it was a big boundary.

Ques.2. Who lived on this Ely place during the time that C.R.Kesterson occupied the home place as above stated?

Ans. J.M.Wheeler,Jr. lived at the old Ely houses on that place

Ques.3. What was the fair cash rental value per year of the premises occupied by J.M.Wheeler,Jr.

Answer. It was my understanding that he was running it for his ~~ex~~ father.

Re-examined.

Ques.1. Who got the proceeds of the Ely land which Mr.Wheeler had rented, that is Mr.Wheeler, Sr.

Answer. My understanding was that J.M.Wheeler, Sr. got them. And further this deponent saith not.

A. J. Larson

5.

5.

John Susong, another witness of lawful age, being first ~~ad~~ duly sworn, deposes as follows:

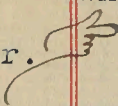
Ques. 1. Were you acquainted with James M. Wheeler, Sr. in his lifetime and if so how long had you known him?

Answer. I was and have known him ever since I can recollect.

Ques. 2. What relation was he to you if any?

Answer. He was my brother-in law and was otherwise a little related.

Ques. 3. If Mr. Wheeler ever made any statements to you of advancements made by him to his children or any one of them, please state what he said about it and state as nearly as you can when he made said statements.

Answer.  He stated to me that he paid \$4000.00 into the Woodson farm for Colson's wife, and that he wanted to make up Kesterson's wife equal to her. This was a short time before his death, may be, as long as a year.

The same exceptions and objections are here made as were made to Morgan's and A.J. Susong's testimony on same question.

E.H. Sewell, Atty for W.G. Colson and
his children.

Cross-examination by Colson's counsel.

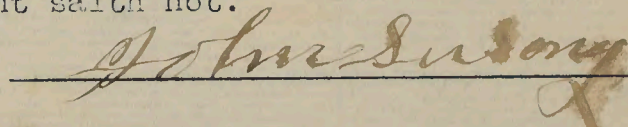
Ques. 1. Where were you and Mr. Wheeler when the above conversation occurred?

Answer. At my house.

Ques. 2. How came you and Mr. Wheeler to be talking about these matters?

Answer. He got to talking about his daughters, and he just named that he had paid \$4000.00 into the Woodson farm for Colson's wife and wanted to or was going to make Kesterson's wife up equal to her.

And further this deponent saith not.



M.S. Ball, another witness of lawful age, being first duly sworn, deposes as follows:

Ques. 1. Were you acquainted with James M. Wheeler, Sr. in his lifetime, and if so how long had you known him?

Answer. I was. I had known him about fifty years.

Ques. 2. Were you at any time in the lifetime of Mr. Wheeler in business with him? If so what was the nature of the business and how long did such business relations continue?

Answer. I was in the mercantile business about 16 or 17 years.

Ques. 3. If Mr. Wheeler in his lifetime ever made any statements to you in reference to advancements made by him to his children or to any one of them, please state what he said and give the time or times as nearly as you can when said conversations occurred?

Answer. Just after Mr. Wheeler purchased the Woodson farm, I was down about the store at Walnut Hill, and I asked Mr. Wheeler if he had purchased said Woodson farm, and he said he had; that he intended to give one half of it to Margaret and have it deeded to her or her heirs to wards the advancements that he intended to make to his children; that he intended to give each five thousand dollars. I do not recollect when he purchased the Woodson land. The price paid for said Woodson land was \$8000.00 or a little more as I understood it. One half of this \$8000.00 he stated was to be paid by Mr. Colson and the other half by himself for his daughter, Margaret.

The same objection and exceptions are made to this question and answer as were made to those of the three former witnesses.

B.H. Sewell, Atty & c.

Cross-examination.

Ques. 1. State how long after the purchase of the Woodson land it was when this conversation occurred?

Answer. - A month or probably two to three months.

Ques. 2. You state that J.M. Wheeler, Sr. said in said conversation that W.G. Colson and himself were the purchasers of the Woodson land?

Answer. ~~xxxxxxx~~ I understood Mr. Wheeler to say that he and W.G. Colson were the purchasers. And that he was to pay half and Colson half.

Ques. 3. Do you know of your own knowledge that J.M. Wheeler, Sr. did pay any money into the Woodson land?

Answer. No sir, I don't know that I do.

And further this deponent saith not.

No. S. Ball

D.C. Willis, another witness of lawful age, being first duly sworn, deposes as follows:

Ques. 1. Were you acquainted with James M. Wheeler, Sr. in his lifetime and if so how long did you know him.

Answer. I was. I have known him from the time I can first recollect up to his death, which was between fifty and sixty years.

Ques. 2. Were you and Mr. Wheeler on intimate and friendly terms with each other?

Answer. So far as I know we were.

Ques. 3. If you ever heard Mr. Wheeler say anything about advancements made by him to his children or to any of them please state what he said and give as nearly as you can the time when he had said conversation with ~~xxxx~~ you.

Answer. The first I heard him say about it was after both his daughters were married when he said that he had given Margaret one thousand dollars, and that he intended to give Mollie an equal sum. This was in the lifetime of Mollie's first husband, Dr. Morgan. At ~~anx~~ other time he told me that he had purchased the Woodson land; that W.G. Colson was to pay for one half of it, and that he was going to pay for the other half and give it to his daughter Margaret. I never did know the exact ~~price~~ price at which they purchased the Woodson land. I do not know what was paid into said land. ²³ Some two or three months before his death Mr. Wheeler told me he was going to give Mollie a thousand dollars to go into the house that her and her husband were building at Cumberland Gap. I do not know whether he did so or not.

This question and answer are objected to for the same reasons given to these same question and answers by the preceding witnesses.

B H. Sewell, Atty for &c.

Ques. 4. Please state any thing Mr. Wheeler may have said to you with reference to the deed of D.K. Young and wife for said Woodson

land?

This question is objected to because the deed will show ~~for~~ for itself and is the best evidence, and as testimony would be heresay.

B.H.Sewell, Atty, for &c.

Answer. I met Mr.Wheeler in the road one Sunday evening near where Streile Robinson's store now is. That was sometime after the death of his daughter Mrs.Colson. He said he had been down to Judge Young's and got a deed to the Woodson land; that he had one half of it deed^d to Colson and the other half deeded to her children; that she ^{Margaret} had requested him to have it made that way.

Cross-examination by B.H.Sewell for &c.

Ques.1. Do you know of your own knowledge that J.M.Wheeler,Sr.ever gave any sum of money to Margaret Colson?

Answer. No, I do not.

And further this witness saith not.

W. C. Willis

William Hoskins, another witness of lawful age, being first duly sworn, deposes as follows:

Ques.1. Were you acquainted with James M.Wheeler,Sr.deceased, in his lifetime. If so how long did you know him?

Answer. I was. I have known ^{him} all my life pretty much. Forty years I should say.

Ques. 2. Are you acquainted with the tract of land formerly owned by William Woodson and purchased by the said Wheeler and W.G.Colson from D.K.Young and wife? How near do you live to it?

Answer. I am acquainted with the land. I suppose I live three miles from it.

Ques.3. What was the fair cash value of said tract of land at the time said parties purchased it² from Young and wife.

Answer. I thought at the time the land was worth \$10,000.00.

Ques.4. If Mr.Wheeler ever made any statement to you of advancement made by him to his children or any of them, please state what he said, and give as near as you can the time when he made said statements?

Answer. *W. C. Willis* Some years after Mr.Colson was married, I heard Mr.Wheeler say that he let Mr.Colson have a thousand dollars to pay on ~~sm~~

some land over the mountain in Ky., but he did not say that he meant it as an advancement to his daughter Margaret. I heard him say that he expected to pay half of the price of the land they bought from Young, that is the Woodson land as it is called, for Colson's wife. This last statement was made probably three or four years before Mr. Wheeler's death, I do not remember the exact time. I heard Mr. Wheeler say he was going to give Mollie Kesterson \$1500.00 to pay or to help to pay for building a house at the Gap. This was about the time of the boom at the Gap, but I do not remember the year.

The same exceptions and objections are made to this question as were made to those of all the preceding witnesses.

B.H. Sewell, Atty, for &c.

Cross-examination by Sewell for &c.

Ques. 1. Do you know of any sums of money paid ~~to~~ by Mr. Wheeler to W.G. Colson or to his wife Margaret?

Answer. I do not of my own knowledge.

And further this witness saith not.

Wm. Kesterson

C.R. Kesterson, another witness of lawful age, being first duly sworn, ~~deposed and says:~~ introduced on behalf of himself and his wife Mollie Kesterson, deposes and says:

Ques. 1. Were you acquainted with James M. Wheeler, Sr., decd. and if so how long had you known him before his death?

Answer. I was. I had known him about twenty years.

Ques. 2. What was the relationship between you and Mr. Wheeler if any

Answer. I was his son-in-law. I married his daughter, Mollie.

Ques. 3. State if you occupied the lands of Mr. Wheeler for any time before his death. If so state what land, what years you occupied them, and the contract under which you held them or occupied them.

Answer. I had his farm which we always called the home place for five years. This included the land where James M. Wheeler, Jr. now lives, the mill-tract and what is known as the Brittain ~~land~~ land. I occupied these lands the years 1886, 1887, 1888, 1889.

1890. The first year 1886 I was to pay him \$600.00 provided I made enough to ~~x~~ justify me in so doing. At the end of the year when I went to settle with him I handed him checks and cash amounting to \$518.00, and said to him I would go to my ~~xx~~ room and get the balance. He said that will do for this year. As you have not done any good with the place, that is all I will charge you for this year. The next year, 1887, I was to pay him \$500.00. At the end of the year I paid the \$500.00 to C.N.Morgan for Mr.Wheeler. For the year 1888, I was to pay him \$450.00. About the end of the year or the first of the next year I paid him \$450.00. I kept the farm on two years longer without any ~~x~~ understanding as to how much I was to pay him, and did not pay him anything. But I paid to my wife, Mollie Kesterson, \$900.00 in a house at Cumberland Gap, after Mr.Wheeler's death. I offered to pay him another~~x~~ years rent, but he told me that he aimed ~~xx~~ for the balance of the rents to go ~~xx~~ into what he aimed to give my wife.

Ques.4. Was \$450.00 a fair cash rental value for said land so occupied by you for the years 1889 and 1890?

Answer. Yes, sir I think it was. The year 1888 when I rented it for \$450.00, I had made up my mind that I would not give him ^{than} more ~~\$~~ \$400.00 for it, but he asked me \$500.00 and we finally split the difference and I agreed to give him \$450.00.

Ques.5. State any other advancements aside from the \$900.00 for the two years rent, made ~~by~~ Mr.Wheeler to your wife, Mollie Kesterson?

Answer. He gave her \$1500.00 in the winter of 1891 ~~x~~ in cash.

Ques. 6. Please state the amount, if anything, that has been paid to your wife, Mollie Kesterson, by the administrators of the estate of James M.Wheeler,Sr.decd.since his death?

Answer. I, paid her as administrator,\$2000.00 at one time. At another time I paid her \$1010.25 as I now remember. The receipt will show~~x~~ the exact amount. Said receipt is filed in our settlement with the Commissioner of Accounts..

Ques.7. Did you and your co-administrator, James M.Wheeler, Jr. at

any time before the institution of this suit attempt to settle the matter of advancements made by James M. Wheeler, Sr. in his lifetime, to his daughter, Margaret, with W.G. Colson who was then the guardian of the infant children of himself and the said Margaret Colson, deceased?

Answer. Yes, sir. We came here to Jonesville once for that purpose

Ques. 8. Was any paper looking to said settlement drawn up and signed

Ques. 8. ed by the parties, or drawn up for signing? If so where is ~~the~~ said paper? Please file it if you have it as a part of your deposition.

Answer. Yes. There was a paper. Mr. Hyatt drew up a paper for us to sign, but we failed to sign it up. We met another day at Cumberland Gap, and Mr. Colson drew up a paper showing the advancements which we all signed and were sworn to. Which last mentioned paper is herewith filed marked "Agreement of Advancements."

Ques. 9. Please state anything you heard M. Wheeler say in reference to the purchase of the Woodson land, what amount he paid on it and whether or not he paid the same as an advancement to his daughter, Margaret Colson?

Answer. I heard him say that he paid \$4000.00 into the Woodson land towards what he intended to give Mrs. Colson out of his estate. That I think was in January 1891, but I won't be positive about the time. At the same time he told me that, ~~he told me that~~ he intended to give my wife \$1000.00 a year until he paid her up equal to what he had given to Mrs. Colson. He said he would pay her a thousand dollars in a few days, but in place of paying a thousand, he sent her \$1500.00, in a short time probably a week or ten days after said conversation. This \$1500.00 is the same I spoke of above as being paid as an advancement in cash.

This question and answer is objected to on the grounds before stated in examination of other witnesses.

B.H. Sewell, Atty. for Colson et al

Ques. 10. As administrator or as one of the administrators of J.M. Wheeler, Sr. decd. did any account books belonging to said whee-

ler come into your hands?

Answer. Yes. A good many books and account books.

Ques.11. In those books was there an account against Mr.Colson? If so, will you please tear the leaf from said book and file it with your deposition.

Answer. There was an account against Mr.Colson. I file herewith the leaf on which said account appears, marked "Leaf from Account Book."

Ques.12. I will ask you to examine said account on the page you have just taken from said book and tell me in whose hand-writing the several items on said leaf appear to be.

Answer. I have examined said leaf. It is in the hand-writing of J.M.Wheeler, Sr. deceased.

Ques.13. I find on Mr.Wheeler's books another charge against ~~W.G.~~ G.W. ~~xxxxxx~~ Colson 1883 To cash \$300.00, and is to pay interest on the same from April 20th 1883 until paid. The Mrs. Morrison money. Please state in whose hand-writing that charge is made?

Answer. It is J.M.Wheeler's own hand writing. I mean J.M.Wheeler, Sr.

Ques.14. Did Mrs.Morrison have a note for this sum of money? If so state whether it was settled by J.M.Wheeler, Sr. in his lifetime and if not state whether it has since been settled, and if so, by whom?

Answer. Mrs. Morrison did hold said note. It was not settled by J.M.Wheeler, in his lifetime, as Mrs.Morrison still held the note after his death. I, as one of the administrators of Mr. Wheeler, paid it off since the death of Mr.Wheeler.

Ques.15. Please state the amount you paid on said note.

Answer. I do not know that I remember the exact amount. I think My settlement I paid \$450.00. ~~The xxxxxxxx~~ with the Commissioner of accounts will show the exact amount.

Ques.16. After the death of Mr.Wheeler, did you find among his papers any note assigned by W.G.Colson to J.M.Wheeler? If so please state by whom said note was executed, to whom executed, and the amount thereof?

14.

it and send a true copy of it to Judge Skeen, Comr.

Ques.4. When you settled with Mrs. Morrison did you take her affidavit of the balance due on said note?

Answer. I did not settle with her, I settled with her son J.H.S. Morrison. I did not take any affidavit.

Ques.5. State whether or not you know that the three hundred dollar charge on said Wheeler's books against W.G. Colson is correct and a proper charge.

Answer. I do not know a thing in the world about it only as I see it on the book.

Ques.6. State whether or not the leaf filed by you in our deposition from Mr. Wheeler's book contains a correct statement of ~~the~~^x the account between said Wheeler and Colson.

Answer. I do not know anything about it, only as I see it on the book, except that bacon which I think I remember seeing hauled away, but I do not know whether this is the same bacon.

Ques.7. Please take said account and state whether or not the ~~charge~~ charge January 29th 1889, order from John Barnett for \$56.00 has been paid to you ~~XXXXXX~~ or your co-administrator since^c the death of said J.M. Wheeler, Sr. in a deed for some land.

Answer. It was not paid to us. It might have gone as a credit on the land. We settled up, and Mr. Colson told us as I recollect, that Mr. Wheeler has paid all that had been paid on the Barnett land, and we as administrators, finished paying for the land and got a deed made to Wheeler's heirs for said land.

Ques.8. Then if the Wheeler estate got the Barnett land, the item of \$56.00 as shown by said account is not a proper charge against W.G. Colson?

Answer. If it went on the land, I do not think it ought to be. But the account does not say or show whether it was on the land or not. If it was credited on the land, Colson ought not to be charged with it. I do not know whether it was credited on the land or not.

Ques. 9. Please state whether or not all the accounts between J.M. Wheeler, Sr. and W.G. Colson, as appears on the books, prior to the account filed with this deposition, show settlement in full.

Answer. All that I have ever seen were marked off, except account shown on the leaf filed, the charge of Mrs. Morrison money for \$300.00, and there may be a little store account on the store books, but I am not certain.

Ques.10. State whether or not you and your co-administrator, after the death of said Wheeler, paid to W.G.Colson certain sums of money due him from said Wheeler's estate, and if so how much?

Answer. I paid him April 20th 1891 \$540.00 for four mules, for ~~which~~ I took his receipt which is filed as credit No.1.in the settlement of my account of as administrator of J.M.Wheeler. Mr. Colson promised me to make out an account properly proven which he has not yet done.

Ques.11. State in whose hand-writing if you know, the account I here hand you, marked "A".

Answer. I think it is in Mr.Wheeler's hand writing.

Ques.12. What is the date of the item by cash when overpaid Mollie Kesterson \$20.00?

Answer. There is no date as shown by the account. About the last of January or the First of February 1891, Mr.Colson brought my wife \$1500.00 from Mr.Wheeler, and when he counted it out ~~there~~ there was \$1520.00, and I guess this item is that \$20.00. If it is, the date of it is about the last of January or the first of February 1891. I could show the exact date by referring to my Bank account.

Ques.13. Who was present at the time you made the settlement of the rents with Mr.Wheeler, spoken of in your examination in chief.

Answer. My wife was present ~~xxxxxx~~ if when I paid one year's rent, ~~and~~ and if any one was present when I paid the other two years I ~~do~~ do not remember it.

Ques.14. When was the \$2000.00 paid to Mrs.Kesterson by the administrators of J.M.Wheeler?

Answer. May 15th 1891, the receipt is filed with my administration settlement as credit No.4. The other amount paid to her was \$1010.25 paid on the 1st day of March 1892, her receipt for which is filed with my administration settlement as credit No. 38.

~~RE-EXAMINATION OF THE DEPONENT~~

Re-examination.

Ques.1. In Ques.11. of your cross-examination you were shown an account marked "A" and state that said account is in Mr. Wheeler's hand-writing. In Ques.12. you are asked the date of the item by cash when overpaid Mollie Kesterson \$20.00 You state that when Mr. Colson brought your wife \$1500.00 from Mr. Wheeler, and when he counted it out there was \$1520.00. Now what did your wife get of this money, and who kept the balance?

Answer. My wife got \$1500.00 and Mr. Colson kept the \$20.00.

And further this deponent saith not.

C. R. Kesterson

Lee Gibson, another witness of lawful age, being first ~~ad~~ duly sworn, deposes as follows:

Ques.1. Were you acquainted with James. M. Wheeler, Sr. decd. in his lifetime? If so how long did you know him.

Answer. I was acquainted with him awhile. I knew him 25 or 30 years.

Ques.2. If you ever heard Mr. Wheeler say anything about the payment of rent to him by C. R. Kesterson while Mr. Kesterson was occupying the property known as the said Wheeler's home place, where J. M. Wheeler, Jr. now lives, please state what he said.

~~ANSWER.~~ This question is objected to in so far as it applies to the Colson children, because it is heresay.

B. H. Sewell, Atty. for &c.

Answer. One morning there I was eating breakfast, the old man came in where I was eating my breakfast, and told me what to haul ~~h~~ that day, and said he was going off up to Clint's, He said he had some money due on the rent from Mr. Kesterson, and said ~~the~~ that he had to go back to the Gap that day for something or other. Next day I was working at the granary, and Mr. Wheeler said Mr. Kesterson had paid him the rent yesterday. I said to him, Mr. Wheeler aren't you going to give the children anything? He said ~~h~~ no, that it was his land and he intended to make them all pay rent, and when I see cause to give them anything I'll give it to them.

Ques.3. Did Mr.Wheeler state in that or any other conversation for how many years Mr.Kesterson had paid him rent? If so, please state it.

Answer. He did not state it then. But he stated it about the next year, I think it was the last year that Mr.Kesterson stayed there. After Mr.Kesterson had determined to go to the Gap he came to where Mr.Wheeler, myself and others were and asked Mr.Wheeler if he did not want to buy his produce at the place he was leaving. Mr.Wheeler asked him if he ^{had} a bill of it made out. Mr.Kesterson told him he did, and handed him the bill, and after looking at it, he handed Mr.Wheeler handed it back to Mr.Kesterson, and said he believed he did not want to buy it then, but that if he could not sell it to others, he might buy it. Mr.Kesterson then left, and after leaving Mr. Wheeler laughed and remarked and Clint thought he was pretty sharp; that Clint did not owe him any thing and he owed Clint nothing; that Clint had paid him his rents, and he had got the money, and now Clint wanted to get off on him his old plows and other produce and get the money back. In that conversation Mr.Wheeler stated that Mr.Kesterson had paid him the ~~rent~~ rents for ~~threexyears~~ the third year.

The same objection is made to this question and answer that were made to like questions and answers of H.J.Morgan and other witnesses.

And further this deponent saith not.

Lee ^{his} Gibson
mark

Mrs.Amanda Morrison, another witness of lawful age, being first duly sworn, deposes and says:

Ques.1. I now show you a note which purports to have been executed to you on the 20th day of April 1883 by J.M.Wheeler for \$300.00 will you please state what said note was executed for, and if executed for borrowed money please state who got the money?

Answer. The note was executed for borrowed money. I paid the money to J.M.Wheeler.

Ques.2. Do you know for whom Mr.Wheeler got the money?

Answer.

18.

Answer. For Mr.W.G.Colson.

Ques.3. Has said money been repaid to you and if so by whom?

Answer. It was paid to me by C.R.Kesterson, since the death of Mr. Wheeler.

Cross -examined.

Ques.1. Do you know that Mr.Wheeler let Mr.Colson have that money?

Answer. I do not know it of my own knowledge. When Mr.Wheeler get the money, he told me he wanted it for Mr.Colson. And very often afterwards I would meet up with him, and he would ask me if I needed that money, and say if I did that he would see Mr.Colson and get it.

Ques.3. You always looked to Mr.Wheeler for your pay and finally got it from his estate?

Answer. Yes.

And further this deponent saith not.

Amanda Gordon

John Susong recalled, by plaintiff.

Ques.1. If you ever heard J.M.Wheeler,Sr. say anything about the payment of rent made by C.R.Kesterson to him for the use and occupancy of what is known as the said Wheeler's home place where J.M.Wheeler,Jr.now lives, please state what he said.

Answer I heard him say that he rented to him for \$600.00 for the first year, and that he did not do very well the first year and that he knowked it down to five hundred and something, and that he had received three years rent.

The foregoing question and answer thereto and objected to for the reason heretofore stated.

B.H.Sewell, Atty for &c.

Cross-examined.

Ques.1. Who was present at this conversat-on?

Answer. I do not recollect who was present. It was at Walnut Hill at Mr. Wheeler's store.

Ques.2. When did this conversation occur?

Answer. It was along close to the end of the third year or the beginning of the fourth year.

And further this deponent saith not.

John S. S. my

Mrs. Mollie Kesterson, another witness of lawful age, introduced in her own behalf deposes and says:

Ques.1. What relation were you to J.M. Wheeler, Sr decd.?

Answer. I was his daughter.

Ques.2. Please state what advancements, if any, were made to you by your father in his lifetime?

Answer. The only cash that I ever received was \$1500.00 that was sent to me from my father by W.G. Colson. This was just a short time before my father died. There was due by my husband, C.R. Kesterson, \$900.00 to my father for rents which were never accounted for to my father. After my father's death Mr. Kesterson~~xx~~ paid this sum to me in the house where I now live at Cumberland Gap. This \$900.00 was for the rent^{due} of the place

Ques.3. where my brother, J.M. Wheeler, Jr. now lives.

How many years did you and your husband, C.R. Kesterson occupy said farm?

Answer. Five.

Ques.4. Please state whether or not at any time you saw your husband pay to your father any of the rent on said land. If so state the amount if you remember it, and the year or years for which said payment was made?

Answer. I saw him pay the second year's rent, which was \$500.00 as I remember.

Ques.5. You state in answer to Ques.2. asked you, that W.G. Colson brought you from your father \$1500.00, what did Mr. Colson^{Say} when he brought said amount?

Answer. He said there was some money that father had sent. I do not remember anything more that he said. There were \$20.00

over the \$1500.00 which Mr. Colson kept.

Ques. 6. Please state anything you may know, or at anytime heard your father say, about advancements ~~by~~ made by your father in his lifetime to your sister, Margaret?

Answer. I heard him say he paid \$4000.00 into the Woodson farm for her, and intended charging~~h~~ her interest on this sum up to the time he made me up equal to her.

The same objection is here made as were made to same question asked H. J. Morgan and other witnesses on the same point.

E. H. Sewell, Atty. for &c.

Ques. 7. Please state when you first heard your father say that he had paid \$4000.00 into the Woodson farm for your sister, and also state the last time you heard him speak of it more than once.

Answer. I think I have heard him repeat it over time and again, but I can't tell just the time. The last time was just before I moved to the Gap. He said he intended to pay me \$1000.00 every year until he paid me up equal to my sister, but when he sent me the money he sent me \$1500.00. It was about four years ago when I moved to the Gap.

Ques. 8. By way of refreshing your memory, I will ask you if, after you moved to the Gap, and the last time your father was at your house, if he did not tell you that he intended giving you a thousand dollars a year until he made you up equal with your sister, Margaret?

Answer. I do not remember that.

Ques. 9. Do you know of any advancements made by your father to your brother, James?

Answer. No sir. I do not know of any.

Cross-examined.

Ques. 1. And further this deponent saith not.

Hollie Kesterson

James.M.Wheeler,Jr.,another witness of lawful age,intro-
duced in behalf of the plaintiff, and being first duly sworn,
deposes and says:

Ques.1. What relation were you to James.M.Wheeler,Sr.decd.?

Answer. I was his son.

Ques.2. Please state what advancements, if any, were made to you
by your father, in his lifetime.

Answer. There were no advamcements at all made to me.

Ques.3. Please state any advancements made by your father in his
lifetime to either one of his daughters.

Answer. In the fall of 1880 I shipped his cattle for him and brought
back \$2500.00, ^{of} which I deposited \$1700.00 in Cumberland Gap ~~Ex~~
Bank to his credit. I kept the other for him, and paid \$200.
on some cattle I bought for him the 2nd day of January 1891.
I kept the other until he sent me word to come down to the
Brent place and bring it to him. That was on the last days
of January or the first days of February 1891, I rather think
on the first days of February 1891. He said he wanted to pay
Mollie Kesterson \$1000.00, but he had enough to pay her \$1500.
00; that he wanted to make her up equal with Margaret Colson
into the Woodson land
~~Ex~~ for whom he had paid \$4000.00 and also let W.G.Colson have
\$1000.00 in money for which a note was executed, which made
\$5000.00 which he had paid to her and for her. He also aim-
ed to charge interest on the note until he paid Mollie up equal
with Margaret, so he said. And I believe he said he ~~xxx~~
aimed to charge Margaret interest on all he had paid for her
until he paid Mollie up equal with her. He ~~xxx~~ said then
that he did not intend to give them any more for awhile.

The same objection is here made as was made to the ques-
tion and answer of H.J.Morgan ~~xxxx~~ on same point.

E.H.Sewell,Atty.for Colson et her

Ques.2. Please state, if you know, the date of the purchase of the
Woodson land?

Answer. I think it was in the year of 1885 or 1886.

Ques.5. About the time said purchase was made, please state if you
heard your father say the purpose of said purchase or for

whom said purchase was made?

Answer. He first wanted C.R.Kesterson to help buy the farm, said he would pay for half of it and give it to Mollie, which Kesterson would not agree to do. Then he said afterwards that he named it to Mr.Colson, and that Colson agreed to help buy it. And he ^{Colson he, where.} bought it and paid \$4000.00 which he gave to Margaret Colson. This was right about the time of the purchase. ~~Ques.6.~~ of said land.

Ques.6. Mr.Colson, in his answer, charges that you were in possession of what is known as the Ely land before the death of your father for the period of five years; that your father paid the rents to the Ely estate; that this rent so paid was in the nature of an advancement to you, and for which you are properly chargeable. Please state how this is.

Answer. My father rented the farm for five years. I run it for him that same five years, for which I received nothing. He took the proceeds of the farm and paid it into the Woodson land. Colson knows himself that I received nothing as an advancement

Ques. 7. Mr.Colson further charges, in his answer, that you are properly chargeable for two years rent for your father's home ~~place~~ place, prior to the death of your said father. Please state how this is.

Answer. I moved there in December 1890. My father died April 6th 1891. So I was only on the place three or four months before my father's death, and made no crop in that time. I never received any rents from said farm before my father's death.

Ques.8. Please state what sums, if anything, has been paid to you by the administrators of your father's estate since his death

Answer. I do not remember the amounts, but the receipts are filed in my administration settlement, and will show. And upon an inspection of said receipts I find they amount to the sum of \$6782.35. Each receipt shows the date ~~of~~ when I received said money, and I think the bill in this case shows accurately the dates and amounts of said receipts.

Ques.9. Did the account books of your father come into the hands of yourself and your co-administrator, C.R.Kesterson?

Answer. They did.

Ques.10. I now show you two books and ask you if you recognize them as books belonging to your father, and if you saw them in his possession before his death?

Answer. I have seen him use them in his lifetime.

Ques.11. I will ask you in whose hand-writing the charge at the top of the last page on book one which reads as follows "G.W.Colson, Dr. To cash \$300.00 & is to pay interest on the same from April 20th 1883 until paid, the Mrs.Morison money"~~is~~.??

Answer. It is my father's.

Ques. 12. I will now ask you in whose hand-writing is the account against G.W.Colson on page ~~1~~ 136 of Book 2. which is the same leaf filed by Mr.Kesterson with his deposition marked "Leaf of Account Book".

Answer. It is in father's hand~~x~~ write.

Ques.13 Were these two books kept by your father in the regular course of his business?

Answer. They were.

Ques.14. After the death of your father did you find in his papers a note executed by W.G.Colson to him. If so, what is the amount of said note, and is it the same note filed with your ~~bill~~ bill in this case?

Answer. I did find in his papers a note executed to him by Mr.Colson for the sum of one-thousand dollars which is the same note filed with the bill in this case .

Ques.15. Did you find among your father's papers any note or notes executed to Mr.Colson by any other person and assigned by him to your father. If so, please state by whom said note was executed, and the amount thereof as nearly as you can remember it.

Answer. We found a note ~~for~~ ^{for} \$16,000.00 executed to W.G.Colson by Catherine Colson, which was assigned to my father.

Ques.16. What did you do with said note.

Answer. Gave it to Mr.Colson.

Ques.17. Why did you give it to him?

Answer. We ~~g~~ gave it to him because he said it was some foolishness between him and my father. He claimed it was his.

The last question and answer are objected to because irrelevant and immaterial.

B.H.Sewell, Atty for Colsons.

Ques.18. Did you and C.R.Kesterson, as administrators of your father's estate, before the institution of this suit attempt to make a settlement of the advancements made by your father in his lifetime to his children?

Answer. We did.

Ques.19. Up to the time of the institution of this suit did Mr.Colson at any time deny to you that your father had made advancements to your sister, Margaret, to the amount of \$5000.00? that is, \$4000.00 in the Woodson land, and the \$1000.00 note?

Answer. He did not.

Ques.20. I will ask you to state if Mr.Colson did not all along from the death of your father up to the institution of this suit admit that the \$4000.00 paid by your father into the Woodson land and the \$1000.00 for which he executed the note filed with the bill, were made by your father as advancements to your sister, Margaret?

Answer. I think he did. I do not know that he said anything about the note particularly, but he admitted that the \$4000.00 paid into the land was an advancement to her.

The foregoing question is objected to, because the note is the best evidence and will show for itself.

B.H.Sewell, Atty. for &c.

Ques.21. What time did your sister, Margaret Colson, die?

Answer. I think it was in August ~~1890~~ 1890.

Ques.22. At the time the paper filed with ~~the deposition of~~ C.R.Kesterson's deposition, marked "Agreement of Advancements", was executed was it not the understanding and agreement among you that your sister Mollie had been advanced \$2400.00 and that your sister Margaret had been advanced \$5000.00?

Answer. Objected to because the paper shows for itself.

B.H.Sewell, for &c.

Answer. It was.

Ques.23. Did you not sign said paper with the understanding aforesaid

A

Same objection is made as to last question.

B.H.Sewell, Atty.for Colsons.

Answer. I did.

Ques.25. At the time you signed said paper was any part of the writing on it commencing- with the following words:"Also W.G.Colson conveyed or caused to be conveyed to J.M.Wheeler,Sr.decd.-"down to the signatures on said paper?

Answer. It was not.

Ques.26. Had such a thing as Mr.Colson claiming that he had conveyed lands to your father in settlement of said \$4000.00 paid into the Woodson land and said \$1000.00 note been mentioned at the time you signed said paper and left?

Answer. It had not.

Ques.27. What disposition was made of the rents of your father's lands after his death and up to the time partition of the same were made, I mean for the years 1891 and 1892? Speak first of the lands occupied by you, and tell what lands you did occupy for those two years.

Answer. I occupied the home place for the year 1891 and paid my rents the same as any other renter, and the rents of the lands were ~~px~~ sold and fed into stock ~~whichxxxxxxsaid~~ belonging to ~~the~~ the estate which was sold. For the year 1892 I occupied the same lands and paid \$500.00 cash rent which I am charged with as administrator. ~~H~~ The rents of the residue of the lands outside of that occupied by me for the year 1891 were all sold by the admrs.or fed into stock belonging to the estate and sold by them. ~~Hxx~~ The store-place was rented by Geo.Wheeler for which he paid \$140.00 to the administrators for the year 1892. The grass lands were rented to Robert Brent for which ~~is to pay~~ he ~~paid~~ to the administrators \$75.00 and with which they are ~~h~~ charged for 1892. W.G.Colson got a part of the grain rents from the lands assigned in the partition to the heirs of Margaret Colson, decd., the amount of which has never been reported to us and I do not know the exact amount thereof. Mr C.R. Kesterson ~~got~~ also got some corn from the land assigned to the heirs of Margaret Colson, the amount of which has not been re-

ported to me nor do I know the exact amount.

Cross examination.

Question 1: At the time you came to Judge Morgan to bring the suit for partition of your fathers land, did you not state to judge ~~Mag~~ Morgan, at that time, that your sister Mollie Kesterson had received \$5000.00 from your father?

Answer: I did not that I have any recollection of, I told Judge Morgan that C.R.Kesterson had rented the Home place of my father for five years, and that my father intended to give them some out of it but I did not know how much, ~~and~~ I also told him that it was the intention of my father to give Mollie \$5000.00 to make her up equal with Margaret Colson. I do not know how much rent

~~Question~~ 2: Mr. Kesterson paid my father towards said ~~rent~~ on said land.

Question 2: Please state where you and the other signers to this paper marked "Agreement of Advancements" ~~were~~ signed it, and who were present at the time?

Answer. We were at Cumberland Gap. I signed it in Kesterson's store as I best remember. I did not see the others sign it, and do not know where they were when they signed it. The latter part of the paper was filled out after I signed it. I do not remember who was present when I signed it.

Ques.3. Where were you when you swore to the paper, and who were present when you swore to it.

Answer. I was at Cumberland Gap, when I swore to it, I swore to it before the latter part was added to it. If it had been to it I would not have sworn to it. I do not remember who was present.

Ques.4. Please examine said paper and state where your signature appears with reference to the other ~~parties~~ names?

Answer. My name appears last or below the others, but I signed it first. There were no other names on there when I signed it.

Ques.5. It it not a fact that all of the signers of this paper were present and swore to it at the same time?

Answer. It is not.

Ques.6. What disposition was made of this paper after it was signed by the parties?

27.

Answer. I understood it was sent to Mr. Hyatt, Commissioner of Accounts. It was sent to me By Mr. Hyatt.

Ques. 7. In whose possession has the paper been all the time since it was signed?

Answer. It has been in mine since Mr. Hyatt returned it to me. I do not know in whose possession it was from the time it was signed up to that time.

Ques. 8. Please state when Mr. W. G. Colson made the admissions to you as contained in question 20 of your examination in chief, about the \$4000.00 paid by your father into the Woodson land, and the \$1000.00 for which the note was executed, were advancements, and state the conversation that occurred between you and him.

Answer. We were going down the road one time between my house and the store to the best of my recollection shortly after my fathers death and were talking about his business. I believe we were talking ~~and~~ about the rents of the land that Clint was to pay at home. I think Mr. Colson claimed that Clint was to pay \$700.00 a year, for five years, and the \$1500.00 that father gave Mollie, which made Mollie \$5000.00, equal to the advancements he had made Margaret, \$4000.00 in the Woodson land and the \$1000.00 note. This is the conversation to the best of my recollection. There might have been other times, I do not remember.

Ques. 9. Please state whether or not your father talked freely to you about his business, and state if he ever told you about Kesterson paying him any rents.

Answer. He did, in the last year ^{or two} before his death, more so than he ever had before. I do not remember whether he ever told me that Kesterson had paid him any rents or not. I think he did at one time though. He said something about the rents being due, ^{he and I} and was going up to Kesterson's house, and he wanted Kesterson to pay it as soon as he could.

Ques. 10. In the above conversation between you and Colson as you were going down the road, did you not state to the said Colson that if Kesterson had ever paid your father any rents, you did

not know it, and that you had never heard your father say anything about it.

Answer. I do not remember, I might have told him.

Ques.11. Please state whether or not you were indebted to your father in any amount at the time of his death.

Answer. I owed a store account, which I settled since my fathers ~~de~~ death as the settlement will show. I do not remember the amount, but I think it was from \$400.00 to \$500.00.

Ques.12. Was that amount reported as a part of the assets of the estate?

Answer. It was.

Ques.13. State whether or not your father ever paid any debts for you. ~~2~~ and if so state the amount.

Answer. He did. He paid a note to J.B.Hill, but I paid it back to him. He never ~~paid~~ any other debts for me. I do not remember the exact amount, but I think it was from \$200.00 to \$350.00 I have the note at home.

Ques.14. Please state whether or not the order from John Barnett for \$56.00 has been settled ^{with} ~~by~~ the estate of J.M.Wheeler, Sr., and if so, whether W.G.Colson should be charged with it.

Answer. I do not know whether it was or not. If it was ~~Indemnity~~ ~~xxxx~~ Mr.Colson ought not to pay it.

Ques.15. Did you not have a talk with Colson with regard to the articles charged on this leaf, and from the statements then made between you, you were satisfied that this account was settled in full?

Answer. I do not remember. I might have done so. I might have done it. I do not know.

Ques.16 ~~Ques.16~~. Do you not know that it is a fact that W.G.Colson frequently bought cattle ~~from~~ your father, and performed other services for him?

Answer. I know that he bought cattle for him. I do not know of any other services he performed. He might have done so.

Ques.17. Q Is it not a fact that your father was an extensive cattle dealer, and that you also dealt in cattle yourself a portion of the time.

Answer. My ~~father~~ father was an extensive cattle dealer prior to his death

I also dealt in cattle some.

Ques.18. Did you not deal in cattle as a partner with Frank Kincaid during this time.

Answer. I did not. My father was a partner with Frank Kincaid and I helped do the work for my father.

Ques.19. ~~Ques.~~ Were you not all three partners at one time?

Answer. We were not. What cattle I handled at that time I handled for myself.

Ques.20. With that account before you, and the \$300.00 charge spoken of by you on Mr.Wheeler's books against Colson, did not you and your co-administrator, after the death of Mr.Wheeler, pay to W.G.Colson certain sums of money due him from said estate? and if so how much did you so pay him?

Answer. My co-administrator paid Colson for some mules, I do not remember the amount. This amount was paid before we found of the \$300.00 Morison that charge ~~XXXXXXXXXXXX~~ on the books. I did not know of the ~~XXXXX~~ account on the leaf filed with Mr.Kesterson's deposition at that time.

Ques.21. Are you positive that you did not know of these two account before said amount was paid to Mr.Colson for the mules.

Answer. I am.

Ques.22. Do you ~~know~~^{know} of any debts that C.E.Kesterson or his wife owed that Mr.Wheeler paid off for them in his lifetime?

Answer. I do not.

Ques.23. Do you know of a debt that C.R.Kesterson owed to Zack Bibson which Mr.Wheeler paid for ~~them~~?

Answer. I do not know any thing about ~~xxx~~ that.

Re-direct-examination.

Ques.1. How long did you do business for your father after you attained the age of 21 years?

Answer. Five or six years.

Ques.2. Did he ever pay you anything for your services?

Answer. He did not.

Ques.3. What were said services reasonably worth each year?

Answer. At least \$200.00 a year.

Re-corss examination.

Ques.1. During the time that you performed these services were you not married, and living on your father's premises, or premises furnished you by your father without any charge against you.

Answer. I was.

And further this deponent saith not.

C.T.Duncan, another witness of lawful age, being first duly sworn, deposes and says:

Ques.1. Were you acquainted with the late James M.Wheeler in his ~~xx~~ lifetime, and if so, how long did you know him?

Answer. I was. I had known Mr.Wheeler from 1866 down to the time of his death.

Ques.2. Did Mr.Wheeler ever make any statements to you of advancements made by him to his children or any one of them. If so state when it was as nearly as you can, and all that you remember to have heard him say in relation to that subject.

Answer. A short time before Mr.Wheeler's last sickness and death, I was at his place. We were near where the depot at Wheeler's has since been built. H pointed out to me where he was going to build a store-house, and was talking about what he wanted to do in way of improving his property there, and building up some business at that place. And while in this conversation he said to me that he had just given, or intended in a day or two to give, my strongest impression is that he said he had just given his daughter, Mollie, \$1500.00 to be used in a house at Cumberland Gap. I asked him if he thought it was wise to invest money in property at Cumberland Gap, and stated to him that I did not have ^{as} much confidence in the success of that town as some other people seemed to have. He then said that after he give the money to them, it was their palce to take ~~xx~~ care of it, as they knew how he had made it. He further said that he had given his daughter Margaret ^{or her husband} something like \$1500.0 and that he ~~x~~ had paid for her into the Woodson land the sum of \$4000.00 and that he intended to make Mollie up equal to ~~xx~~ Margaret, and that the home-place was for him and Jim, for

himself as long as he wanted to use it, and after he got done with it, he then intended Jim to have it. He had spoken to me several times before this about the purchase of the Woodson land and that he was paying for ano half of it as an advance~~me~~ ment for his daughter, Margaret. I can't give the exact date when ~~ixhad~~ Mr. Wheller had with me ^{the} conversation first above mentioned. It was the last time, as I now recollect, that I ever saw Mr. Wheeler, and was a very short time before he was confined to his bed, as I was there shortly afterwards, did not see him, but was informed that he was sick.

The same objection is here made as was made to same question and answer of H.J. Morgan and other witnesses on same ~~point~~ point, and also because what Judge Duncan said on that occasion is irrelevant and immaterial in this case.

B.H. Sewell, Atty. for &c.

Ques. 3. Please state whether or not you frequently saw and talked with Mr. Wheeler from about the commencement of the year 1887 down to the time of his death. And if so please state the business you were then engaged in which required your presence in his neighborhood ~~in~~ frequently?

Answer. I do not remember seeing much of Mr. Wheeler in the early ~~part~~ part of the year 1887, but in the latter part of the summer of that year and during the fall of said year I saw a good ~~deal~~ deal of Mr. Wheeler. I was then engaged in taking contracts ~~for~~ for right of way for the L. & N. R. R. Co., and was in Mr. Wheeler's neighborhood frequently. From about the first of May 1889 up to the time of Mr. Wheeler's death, I was in his neighborhood, I believe every month and sometimes two or three times a ~~month~~ month. I was then engaged in work for the L. & N. R. R. Co., as their general counsel in Virginia, and I met Mr. Wheeler almost every time I was in his neighborhood. I think I might say I saw him at least once a month from the first of June 1889 up to the time he got sick, which according to my best recollection was in the latter part of February 1891.

Cross-examination.

Ques. 1. Do you know of your knowledge any sums of money paid by J.M.

W

Wheeler, in his lifetime, to his daughter Margaret?

Answer. I do not.

~~Plaintiff~~ 2. Please state what parties, if any, you represent as Attorney in this case?

Answer. I represent J.M.Wheeler, Jr., the complainant, and C.R.Kesterson and Mollie Kesterson, his wife, two of the defendants in said cause. I also represent J.M.Wheeler, Jr. and C.R.Kesterson, as administrators of the estate of J.M.Wheeler, Sr. decd., in ~~these~~ various matters connected with said estate, and if there is any matters in which they as administrators are interested in this case, I represent them.

And further this deponent saith not.

C. J. Duncan

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(9 to 21)

Will vs. Hester

James M. Wheeler, Jr.,

Plaintiff.

vs.

In Chancery.

C.R. Kesterson et als.

Defendants.

To the Honorable W.T. Miller, Judge of the Circuit Court
of Lee County, Virginia.

The undersigned Commissioner, pursuant to a decree rendered in the above styled Chancery Cause, on the 17th. day of November, 1894, requiring your commissioner to take and state an account of advancements made by James M. Wheeler, Sr. to his children or either of them, the amount of advancements to each, and when made, the amount that must be ^{paid} to either or any of the heirs of said James Wheeler, deceased, to equalize them with the other or orthers of said heirs; and also to state and settle the administration account of James M. Wheeler, Jr. and C.R. Kesterson, administrators of James M. Wheeler, Sr., Deceased, and ascertain what sum or sums have been paid by said administrators to any of the heirs of the said James M. Wheeler, Deceased, when paid and to whom paid and the amount still in the hands of the said administrators belonging to the estate, reports unto your honor that after having given all parties interested notice of the time, place and purpose of his sitting, on the 11th. day of February, 1895, in the town of Jonesville, Virginia, at Duncan & Hyatt's Law Office, proceeded to execute and perform the duties required of your commissioner by your honor's decree; the duties required of your commissioner not being completed on said day the same was adjourned from time to time until the same was completed; and your commissioner reports the following as his finding, ~~as~~ to-wit:

WHEELER AND HILL DEBT.

FIRST- J.B. Hill, a member of the late firm of Wheeler & Hill, presented an account for \$600.00 in favor of said firm against

the estate of James M. Wheeler, Deceased, to be considered and passed upon by your commissioner, to which action of your commissioner the administrators of James M. Wheeler, Deceased, by their attorneys, objected ~~to~~ ~~the~~ because it was not proper to do so in this suit. Your commissioner, under the issue raised by the pleadings, and the duties required ^{by} of your honor's decree, is of the opinion and so reports that he has no right to pass upon said account.

But if your commissioner is mistaken in his above opinion and it is his duty to report upon said account, he refuses to allow said account against the estate of said James M. Wheeler, Deceased, because the same is not satisfactorily proved.

J.B. Hill, in support of said claim, took his own and R.C. Brent's deposition. The heirs and administrators of James M. Wheeler, Deceased, objected to J.B. Hill testifying because one of the original parties to the transaction is dead, which objection your commissioner sustains. The only evidence in support of said claim besides J.B. Hill's testimony is the deposition of R.C. Brent, which does not prove said account.

R.C. BRENT'S DEBT.

SECOND- R.C. Brent presented an account against the estate of James M. Wheeler, Deceased, for the consideration of your commissioner but, after the parties had taken testimony in regard to said account, said Brent and the administrators of James M. Wheeler's estate compromised and settled said matter.

Mrs. L.M. Hobbs Debt.

THIRD- Your commissioner is of the opinion that under the pleadings and the duties required of your commissioner by your honor's decree, he can not act upon the claim of Mrs. L.M. Hobbs against the estate of James M. Wheeler, Deceased, and the cross-

claim of the administrators of the said estate against Mrs. L.M. Hobbs.

But if your commissioner is mistaken in his above opinion and should act and report upon said claim he finds that the estate of James M. Wheeler, deceased, is indebted to Mrs. L.M. Hobbs in the sum of \$241.00 with interest from August 21, 1890, until paid.

W.G. Colson Debt.

FOURTH- Your commissioner is of the opinion that under the issue raised by the pleadings and the decree under which he is acting, that it is not proper for him to pass upon the transactions which passed between W.G. Colson and J.M. Wheeler, Sr., in so far as said transactions relates to W.G. Colson's personal liability to the estate of James M. Wheeler, deceased, and said estates' liability to said Colson.

But if it is proper for your commissioner to pass upon said transactions he is of the opinion that more proof should be taken in regard to the same.

JAMES M. WHEELER, SR. DEBTS.

FIFTH- Your commissioner, for reasons above given, don't think it proper for him to pass upon the following debts of James M. Wheeler, Jr., against the estate of James M. Wheeler, Sr., to-wit: an account for \$64.09, an account for \$229.12 and an account for \$549.32. But if your commissioner should pass upon it he is of the opinion that the account of \$64.09 ^{and the account of \$549.32 are} fully proven and should be allowed; and that the other ~~two~~ accounts ~~are~~ not satisfactorily proven and more proof should be taken if the said James M. Wheeler, Jr. so desires.

ADVANCEMENTS.

SIXTH- Your commissioner finds that J.M. Wheeler, Sr., in his life-time, to-wit: February 9, 1883, advanced \$1000.00 ^{to} ~~for~~ W.G. Colson for Margaret Colson, his wife, the daughter of said James

M. Wheeler, deceased; and your commissioner further finds that on the 9th. of September, 1885, the said James M. Wheeler, Sr. made another advancement of \$4000.00 to Mrs. Margeret Colson. ≈ 5000.00

SEVENTH- Your commissioner finds that in the life-time of James M. Wheeler, Sr. he advanced to his daughter, Mollie Kesterson, in the year of 1889, \$450.00, in the year 1890, \$450.00, and on the -- day of January, 1891, \$1500.00, and that the administrators of James M. Wheeler, Deceased, paid to said Mollie Kesterson, on May 15, 1891, \$2000.00 and on March 1, 1892, ~~\$1010.25~~ $\#1010.25 = 5410.25$

EIGHTH- Your commissioner finds that James M. Wheeler, Deceased in his life-time, did not make any advancements to his son, James M. Wheeler, Jr.; but that James M. Wheeler, Jr. has been paid by the administrators of James M. Wheeler, Sr., as heir, the following sums, to-wit: June 1, 1891, \$500.00, June 10, 1891, \$500.00, November 16, 1891, \$2297.56, April --, 1892, \$500.00, May 1, 1892, \$618.88, May 16, 1892, \$225.00, June 11, 1892, \$1829.03, June 11, 1892, \$250.00, and June 11, 1892, \$61.85. $= 6782.32$

NINTH- Your commissioner finds that the infant heirs of Margeret Colson, Deceased, should receive out of the estate, of James M. Wheeler, Sr. \$1782.35, and Mollie Kesterson should receive from said estate ~~\$872.10~~ $\#1372.10$ to make them equal with James M. Wheeler, Jr.

ADMINISTRATORS SETTLEMENT.

TENTH- Your commissioner finds per commissioner, J.A. Hyatt's settlement, with C.R. Kesterson and James M. Wheeler, Jr. administrators of James M. Wheeler, Sr., Deceased, made February 1, 1893, said administrators had collected \$9497.77 and paid out on debts, and to the heirs of said James M. Wheeler, Deceased, the sum of ~~\$10,000.00~~ \$10,232.08.

ELEVENTH- Your commissioner finds that said administrators since said settlement have collected the following sums, to-wit:

February 15, 1893,	of O.D. Curry,	\$75.00
March 30,	of James Grear	90.68
April 13,	of Pasture,	2.00

April 28, 1893,	on corn	\$17.95
May 2, "	on O.D. Curry Note	356.11
May 24, "	" " " " "	24.03
May 15, 1893	Of John Snaveley Rents	60.00
June 17, 1893	of J.M. Wheeler for corn	45.00
June 17, 1893	on Threshing Machine	12.90
June 17, 1893,	on Corn from Talt. Bailey,	40.00
September 26,	of Z. Fry	30.00
" "	of " " Due Bill	4.30
" "	of " " Leather	2.05
February 15, 1894,	of C.Y. Chapman,	200.00
" " "	Cash from T.S. Gibson for Corn	37.50
April 18, 1894,	on Jack Ely Notes	19.56
April 18, 1894,	for Leather	.75
May 2, 1894,	on Ford Notes	150.00
November 1, 1894,	of A.J. Susong	50.00
" 17, 1894,	of Willis Bruce	10.00
December 13, 1894,	on Tal. Bailey Note	21.20
February 13, 1895,	of Mary E. Brittian	947.00
February 16, 1895,	of J.M. Wheeler for Rent. 1893	500.00
		<u>2696.04</u>

TWELFTH - Your commissioner finds that the said administrators since said settlement has paid out the following sums, to-wit:

	To George Riley	\$5.23.
	To R.S. Dingus,	40.75
September 22, 1893,	To Henry J. Morgan,	36.00
November 8, 1893,	To C.E. Flanary,	305.30
~~September 26, 1893,~~ Feb. 1, 1893	T.A. Hamilton,	14.50
September 26, 1893,	To J.R. Gibson,	17.70
December 7, 1893,	To Daff Fugate,	4.77
1893,	To J.P. Graham, Treasurer,	151.81
February 21, 1893	To Henry J. Morgan	100.00
March 10, 1893,	To J.R. Gibson	5.50

April 25, 1893,	To William Southern	\$10.86,
August 12, 1893,	To Moses Smith	4.00
April 18, 1894,	To C.R. Kesterson,	59.65
December 15, 1894,	To Talt. Bailey,	55.25
April 21, 1894,	To M.S. Overton,	2.50
February 24, 1894,	To M.S. Overton,	34.93,
June 4, 1894,	To J.B. Hill	58.97
March --, 1894,	To Samuel Pearman	112.75
November 9, 1894,	To J.A.C. Hyatt, Treasurer,	164.72
January 1, 1895,	To M.S. Ball	412.00
" " "	To M.S. Ball	23.00
March 5, 1895,	To Allie Lee Prent,	447.08
August 26, 1894,	To Mrs. L.M. Hobbs	17.60 *
September 8, 1894,	To Mrs. L.M. Hobbs	141.08 *
February 16, 1895,	To Mrs. L.M. Hobbs.	472.21 *
		\$2698.10.

The plaintiff in the above styled Chancery Cause, to prove certain advancements made by J.M. Wheeler, Sr., to Margeret Colson, introduced witnesses to prove statements made by said J.M. Wheeler about said advancements to which statements W .G. Colson, as Guardian for the infant heirs, of said Margeret Colson, objected. Your commissioner is clearly of the opinion that said declarations are admissable and therefore overrule said objections.

Respectfully submitted,

N. A. W. Stearns

Commissioner.

Commissioner, H.A.W. Skeen's Fee \$105.00.

Plaintiff's Witnesses

A.J. Susong 1 day and 37 miles \$1.58,
John Susong 1 day and 32 miles \$1.78,
M.S. Pall 1 day and 24 miles, \$1.46,
D.C. Willis 1 day and 32 miles \$1.78
William Hoskins 1 day and 36 miles \$ 1.94
Lee Gibson 2 days and 36 miles \$2.44,
Amanda Morris 1 day and 72 \$3.38,
R.C. Brent 1 day and 36 miles, \$1.94

W.G. Colson's Witnesses,

Richard Risner 2 days and 96 miles \$4.84

Virginia, Wise County, to-wit:

I, B.O. Ferguson, a Justice of the Peace for Wise County, Virginia,
do certify that H.A.W. Skeen, on the 21st. day of May, 1895, appeared
before me in my aforesaid county and made oath that as commissioner
he was diligently employed 140 hours in taking depositions, going
and returning from the place of taking said depositions, examining
authorities and making the above report, and that his fee for the
same is \$105. 00.

*Given under my hand
this May 21, 1895
B. O. Ferguson J.P.*

J. M. Wheeler for

for } Com's Report

C. R. Henderson

Filed May ²² 1876

Dr B. M. Mincey

amount is \$105.00.

authorities and making the above report, and that his fee for the
and returning from the place of taking said depositions, examining
he was diligently employed 140 hours in taking depositions, before
before me in my aforesaid county and made oath that as commissioner
do certify that H. V. W. Skeen, on the 21st day of May, 1876, appeared
J. O. Peterson, a Justice of the Peace for Wise County, Virginia,
Virginia, Wise County, to-wit:

W. G. Colson, a Witness,

Received of J. M. Wheeler \$105.00 and 38 miles \$1.34

H. C. Brent 1 day and 38 miles \$1.34

Aranda Morris 1 day and 38 miles \$1.34

Lee Gibson 3 days and 38 miles \$1.44

William Hopkins 1 day and 38 miles \$1.34

D. C. Hillis 1 day and 38 miles \$1.38

M. S. Hill 1 day and 38 miles \$1.48

John Gussow 1 day and 38 miles \$1.38

A. J. Gussow 1 day and 38 miles \$1.38

Plaintiff's Witness

Commissioner H. V. W. Skeen, a fee \$105.00.

James M. Wheeler Jr }
 vs } In Chy.
 C. R. Kesterson et al }

Pursuant to an order of the Circuit Court of Lee County Va. dated the 3rd day of Dec. 1891 - We the undersigned Commissioners D. M. Cannical, M. S. Ball & S. Fulkerson and William R. Bowles, have performed the duties assigned us in the above styled cause according to the following Report and Plat - We first made partition of the lands owned jointly by the heirs of James M. Wheeler deceased of the one part and Moses S. Ball of the other part, by assigning to said Moses S. Ball the two tracts known as the Pace and Wilson tracts and to the heirs of said J. M. Wheeler the remaining tract known as the Solvin Chadwell tract. 2^{ndly} We partitioned and laid off the landed estate of said James M. Wheeler deceased into three separate parcels which we believe to be as near equal in value as possible, quantity, quality, conveniences, and inconveniences considered. One of these parcels, composed of several separate tracts, we have laid off and assigned to James M. Wheeler Jr. All said tracts being marked No. 3 on plat

accompanying this report.

Lot A=No 2, composed chiefly of the Mills
land, is bounded as follows - Begin-
ning at (A) a large black walnut on the south
side of Indian Creek and near the N. East
corner of orchard where J. M. Wheeler Jr. now
resides thence with original lines N 11 E 8
4 poles to creek and down same with its
various meanders N 86 W 44 poles N 42 1/4 E 23 1/2
N 35 W 57 1/2 N 73 W 3 2 poles to a stake at the
mouth of a low thence with Bowles lines
S 7 1/4 W 33 1/4 poles to a stake in main road (A & B)
S 8 1/2 E 126 1/2 poles to a rock N 77 3/4 E 31 1/5 poles
to a black oak by a large Poplar thence
continuing with original S 12 E 48 poles to wood oak
S 4 1/2 E 200 1/2 poles to (C) a large Poplar on the
top of a hill E steps corner S 83 1/2 E 73 1/2 poles
to a dogwood on a steep hillside N 14 2/3 E 90 1/2
poles to a forked whit oak on the top of a
hill N 31 W 120 poles to a Spanish oak &
kickney on a steep hillside (now gone a rock
& beech) N 26 1/2 E continuing with original
lines S 2 1/2 poles N 8 W 40 1/2 poles thence with
fence N 88 1/4 E 23 1/2 poles to a stake (D) thence
down a hollow with original lines N 93 3/4 W
11 poles N 18 1/4 W 4 poles N 35 1/2 W 26 3/4 poles N 26 W 18
poles to stake (corner to Church Lot & with same)
S 83 1/2 W 11 3/4 po. N 88 1/2 W 11 1/2 po. N 18 1/2 W 10 po. N 42 1/4 W

27 poles to the beginning Containing $21\frac{1}{4}$
Acres more or less - Lot B = N^o 2 bounded
as follows Beginning at (E) a rock on
the north side of State road thence with
said N $74\frac{1}{2}$ E $50\frac{1}{2}$ poles N $78\frac{1}{4}$ E 21 poles N 58 E $25\frac{69}{100}$
N $71\frac{3}{4}$ E $1\frac{20}{100}$ poles to (F) a stake & Corner to Lot
J N^o 1 and with a line thereof S $13\frac{3}{4}$ W $4\frac{1}{2}$
poles to a Whit oak stump passing through
a spring so as to divide it equally forever
between said two Lots thence with orig-
inal lines S 29 W 158 poles to a stake on a
line of Lot A = N^o 2 and with line thereof a
short distance and leaving said N $12\frac{1}{2}$ W
 $41\frac{1}{4}$ poles N $13\frac{3}{4}$ W $70\frac{1}{4}$ poles to the begin-
ning Containing $35\frac{3}{4}$ Acres more or less

Lot C = N^o 2, known as the Burchett or old
Harris tract is bounded as follows to wit. Begin-
ning at (A) a large poplar ^{& rock} in a field corner to
the Burchett lands & with original lines
thereof S $27\frac{1}{2}$ E $41\frac{1}{4}$ poles to a rock S $77\frac{3}{4}$ E $2\frac{3}{4}$ poles
to a hornbeam thence down a lane with
said original lines S 84 W $34\frac{1}{2}$ poles S 64 W 20 poles
S $72\frac{1}{2}$ W 81 poles S 19 E 30 poles S $13\frac{1}{2}$ E $29\frac{3}{5}$ poles
to a stake in a lane near a house thence
continuing with original lines the whole
way around S 61 W 67 poles S $63\frac{3}{4}$ W 37 poles
to a white oak on the south side of road
N $22\frac{1}{4}$ W $13\frac{1}{2}$ poles N $52\frac{1}{2}$ E $80\frac{1}{2}$ poles N 29 W 106
poles N $72\frac{1}{4}$ E $29\frac{3}{4}$ poles N 10 W 16 poles N 15 W 26

A

poles to a rock fence N $74\frac{1}{4}$ E 36 poles to
 stake in a hollow S $21\frac{3}{4}$ E $35\frac{1}{4}$ poles N 29 E
 52 poles S 88 E 48 poles to the beginning
 Containing 112 acres be the same more
 or less. Said tract embracing a 15 acre tract,
 a $6\frac{1}{4}$ acre tract, the old home 50 acre tract, and the
 home Burchett tract. Lot D: N^o 2 known
 as the Baileys Littrell Burchett 41 acre
 tract and described in deed from Ben-
 edict Littrell to ed Baileys Littrell as follows
 Beginning at (A) a white oak on a branch adjoining
 the lands of Chodwell Brittain and a part of
 the same tract of land that said Brittain pur-
 chased of George Brittain and running south
 68 West 127 poles to a locust corner to Samuel
 Lock and thence running N 28 poles to two
 beeches on the back line N 70 E 127 poles to a
 stake on said branch and thence with the
 meanders of said branch to the beginning
 we found meanders of said branch to be as follows
 Beginning at (A) ^{a white oak stump} thence up branch with its meanders
 N 84 W $15\frac{3}{4}$ po. N 5 E 8 po. N 45 W 11 po. west 10 po. N 52 W $4\frac{3}{4}$
 po N 22 W $4\frac{3}{4}$ po N 16 W 7 po. N 4 W 6 po. to (B) the begin-
 — ning. Lot E: N^o 2 is known as the Baileys Littrell
 et 30 acre survey dated May 1848 and bound-
 ed as follows. Beginning at (A) a history
 corner to Lane Locks land thence with the
 same N 24 W 100 poles to (B) a chestnut

oak. thence leaving said line and with Field survey N 79 E 40 poles to a chestnut-oak corner to William Bolls land; thence S 50 E 78 poles to a chestnut-oak, in Reelin Smiths line and with the same S 54 W 68 poles to a small white-oak, South 21 poles to a dogwood thence N 75 W 6 poles to the beginning.

Lot F. No. 2 is a part of the Store or Thousand acre tract, which is composed of the Crobtree and other purchases. said Lot F. No. 2 is bounded as follow Beginning at (A) a stake in the main Valley road, and the North East corner of said tract. Thence with road S 60 W 24 poles S 65 W 24 $\frac{1}{2}$ poles thence leaving road S 24 E 12 poles N 69 E 8 poles to a stake in a lane at or near a black walnut Thence with said lane S 18 $\frac{1}{2}$ E 36 poles to a black walnut S 32 E 42 poles Thence leaving land S 60 $\frac{1}{2}$ W 10 $\frac{1}{2}$ poles S 33 E about 16 $\frac{1}{2}$ poles to a stake in Indian Creek and down same as it meanders S 50 W 17 poles S 6 W 21 poles S 45 E 36 poles S 56 $\frac{1}{2}$ E 32 poles to (B) stake and willows pointers on the East bank of said creek Thence leaving creek N 75 E 16 $\frac{1}{2}$ poles from said willows to a cedar, white walnut & black-oak S 13 $\frac{1}{2}$ E 417 poles to two black oaks on the original south line. Thence with the State line East 76 poles to (C) a dogwood & Chestnut sapling, corner to Lot K, No. 1 and

with a line thereof $N\frac{1}{2}W$ 438 poles to a eye-
wound, willow & stake on Machine Branch
Thence down the meanders of the same $N33W$ 14 po.
 $N57\frac{1}{2}W$ 48 poles $N70\frac{1}{2}W$ 26 $\frac{1}{2}$ poles $N49\frac{3}{4}W$ 34 $\frac{1}{4}$ poles $N68\frac{1}{2}$
 W 13 poles $N22\frac{1}{2}W$ 8 $\frac{1}{2}$ poles to stake in Indian
Creek and with same $N69W$ 22 poles $S45W$ 40
poles to a walnut, poplar & cedar on the north
bank of Indian Creek Thence continuing
with original lines $N34\frac{1}{2}W$ 47 $\frac{1}{2}$ poles to
a rock and cedar $N23W$ 50 $\frac{1}{2}$ poles to the
beginning containing 424 acres, more
or less — Lot G. No. 2 being composed of
the L. D. Fulkerson purchase and a like quantity
of land lying entirely north of main valley
road is bounded as follows — Beginning
at (A) a stake in soil main road and ten feet
west of a large white oak — thence with a corner to
Lot I No. 1 Thence with a line of soil lot
and with a fence $N3W$ 170 poles to (B) a stake
thence with original lines $S83\frac{3}{4}W$ 102 poles
 $N1E$ 30 $\frac{1}{4}$ poles $N83\frac{1}{2}W$ 68 $\frac{1}{2}$ poles $S1\frac{1}{2}W$ 263 poles (cross-
ing the L. & N. R.R. at 172) to a stake in main road
thence with main road $N78\frac{1}{4}E$ 21 po. $N58E$ 25 $\frac{3}{4}$ po. $N71\frac{3}{4}$
 E 150 poles to the beginning — Containing 226 acres
more or less — In making this agreement we
except therefrom the R.R. right of way, being about 7
acres, or as much thereof as was decided to said R.R.
Co.

Lot H, No 2 Containing 80 acres more or less
being one lot of the Golvin Chockwell
land, heretofore divided and of record in
Lee County Clerks office; Without further
survey, we again said 80 acres with its
original acres and bounds as Plat here
with filed indicates

Mollie E. Kesterson's

One of these parcels, composed of several separate tracts, we have laid off and assigned to Mollie E. Kesterson, wife of C. R. Kesterson, all said tracts being marked N^o 7 on Plat accompanying this Report. Lot I. N^o 7

is bounded as follows: Beginning at (A) a stake in the main Valley road, and a corner to the land of M. S. Boll. thence with original lines all the way around N 2 1/2 E 348 1/2 poles to (B) a stake on a spur of Stone Mountain, thence S 83 3/4 W 115 1/4 poles to a cumber on a ridge S 28 3/4 E 35 poles S 2 1/2 W 14 3/4 poles thence down a hollow S 3 E 16 poles to a white oak S 63 1/4 W 10 poles S 2 E 12 3/4 poles S 133 W 36 poles S 10 1/2 W 50 poles S 1/2 W 22 poles S 2 3/4 E 63 poles S 85 1/2 W 17 1/2 poles S 83 1/2 W 10 1/2 poles S 78 W 42 1/2 poles to (C) a stake on lot C. N^o 2 and with line thereof S 3 E 138 poles to (A) a stake in main valley road, more or about 6 poles of R. R. crossing, and 10 feet west of a white oak. thence with said road N 71 3/4 E 13 poles N 73 3/4 E 48 poles N 85 3/4 E 86 poles to (A) the beginning. Containing 258 acres - More or less & known as the Brittain Land

Lot J. N^o 1. lying South of the main Valley road composed of various lots of the Chedwell land and bounded as follows Beginning at (A) a stake in main road at railroad crossing thence with original lines the entire way around S 12 W 256 poles to (B) a stake S 88 E 77 3/4 poles to (C) a double poplar S 10 W 43 poles to a stake in Hoskins line and with same S 80 3/4 W 128 poles thence with line of original Lot N 7 1/4 W 216 poles N 79 E 16 poles to a stake at creek thence continuing with original lines N 5 1/2 W 52 poles down the creek to a stake in middle of a spring thence with line of Lot (B) N^o 2. N 13 3/4 E 63 poles to a stake in main road and with same N 71 3/4 E 134 3/4 poles to the beginning containing 185 acres more or less

Lot K. N^o 1 is a part of the Store or thousand acre tract bounded as follows Beginning at (D) a sycamore, Willow and stake on Croaline branch thence with said branch and original lines S 33 E 64 1/4 poles S 38 E 53 poles S 2 E 35 1/2 poles S 8 E 22 1/2 poles S 35 E 24 poles S 3 1/2 W 52 1/4 poles S 10 W 10 1/4 poles S 7 E 41 poles S 14 E 18 1/4 poles S 7 1/2 W 15 1/2 poles S 18 1/2 E 31 1/4 poles S 5 1/4 E 41 1/4 poles S 5 W 51 poles to (C) a stake in the Tennessee line and with same West 100 poles to (C) a dogwood and chestnut sapling corner thence N 1/2 W 438 poles to (D) the beginning containing 212 acres more or less

Lot L. N^o 1. Containing 150 acres - more or less
being one lot of the Solvin Chodwell
land, heretofore divided and of record in
Lee County Clerk's office, and without
further survey, we again said 150 acres
with its original metes & bounds. as
Plat herewith filed and dated

W. L. COTTON 1862

M. E. Colson Heirs

One of these parcels, composed of several separate tracts we have laid off and assigned to Nora Colson, James Colson, Verda Colson and Lida Colson the heirs at law of Margaret S. Colson deceased. all said tracts being marked N^o 3 on plat accompanying this Report - Lot No. N^o 3, known as the Colson tract, is bounded as follows: Beginning at (A) a sycamore on a branch corner to the Euser land thence with original lines around the entire boundary N 44 $\frac{1}{2}$ W 40 poles to a stake in main road S 56 $\frac{1}{2}$ W 2 poles N 32 W 14 poles N 46 W 16 $\frac{1}{2}$ poles N 80 $\frac{1}{4}$ W 45 poles to (B) a black rock, N 58 $\frac{1}{2}$ E 46 $\frac{3}{4}$ poles to a rock N 15 W 18 poles to a Spanish oak N 32 W 58 poles N 47 E 83 poles to a rock S 33 E 8 poles S 59 E 65 to (C) a cherry tree N 17 $\frac{1}{2}$ W 75 $\frac{1}{2}$ poles to a bunch of sassafras S 54 W 28 $\frac{1}{4}$ poles S 49 $\frac{1}{8}$ E 104 poles N 38 W 73 $\frac{1}{4}$ poles N 47 $\frac{1}{4}$ W 6 poles S 52 W 9 $\frac{1}{4}$ poles to (D) a stake in branch and up branch N 60 $\frac{3}{4}$ W 14 $\frac{1}{2}$ poles N 7 W 20 $\frac{1}{4}$ poles N 10 W 30 poles S 64 $\frac{3}{4}$ W 48 poles to a red oak S 7 $\frac{3}{4}$ W 13 poles S 57 $\frac{1}{4}$ W 125 $\frac{3}{4}$ poles to a chestnut & sugar tree stump on a north hill side S 28 E 70 poles to a chinquapin-oak S 52 $\frac{3}{4}$ W 36 poles S 38 E 170 poles S 60 W 5 $\frac{1}{4}$ poles S 33 $\frac{1}{4}$ E 184 poles crossing R. R. at 32 poles N 45 $\frac{1}{2}$ E 62 $\frac{1}{2}$ poles to a white oak & black-oak - (Euser's Corner) and on a hill

(12)₁₂

at a grove yard N 12 E 26 $\frac{1}{4}$ po to a double oak
N 50 $\frac{1}{2}$ E 15 po, N 52 $\frac{1}{2}$ E 48 po, to the beginning
Containing 515 acres - More or less -

In making this assignment we
except therefore about 5 $\frac{1}{2}$ acres hereto-
fore conveyed to the L. & N. Railroad Co.
and also 3 $\frac{44}{100}$ acres, more or less, hereto-
fore purchased by George Wheeler and
bounded as follows. Beginning
at (A) a cedar on main road thence
N 26° 50' W 22 $\frac{1}{2}$ poles to a stake N 61 $\frac{1}{4}$ E 26
poles S 34 E 18 poles to a stake in middle
of old road and with some S 52 $\frac{1}{4}$ W
29 $\frac{1}{4}$ poles to the beginning

21 N. N. 3 lying at the base of Stone
Mountain. purchased from the Robert Ely
heirs - is bounded as follows. Beginning
at (A) a large white oak on a spur of Stone
Mountain thence with original lines
all the way around, S 65 W 174 poles to
(B) a buck near a branch S 20 $\frac{1}{2}$ E 65 $\frac{1}{2}$ poles
to a white oak on the top of a ridge
S 89 $\frac{1}{2}$ E 16 poles N 54 $\frac{1}{2}$ E 42 poles N 62 E 16 $\frac{1}{2}$ poles
N 72 $\frac{1}{4}$ E 41 $\frac{1}{2}$ poles N 60 E 29 $\frac{1}{4}$ poles N 65 $\frac{1}{4}$ E 70 po
to a chestnut oak corner to the Charles
Bailey land & with lines of some
N 43 $\frac{1}{4}$ W 60 poles to a white oak near the
forks of a branch S 73 $\frac{1}{2}$ W 14 poles to

(A) the beginning Containing 78 acres
more or less

Lot (C) N^o 3 is a part of the Stone or thousand
and Acre tract and bounded as follows
to wit: Beginning at X a corner
to Lot F N^o 2 thence with main road
S 65° W 20½ poles S 52¾° W 34 poles thence
leaving said road and with original
lines all the way around S 19½° E 78
poles to Y a stake S 23° W 77 poles to
a buckeye, sassafras and dogwood on
the south side of Indian creek
S 19° E 140 poles to a hickory and buck
(now gone) S 66° W 38 poles to Z two
Ironwoods (not found) S 22° E 109 poles
to a white oak S 55¾° W 7 poles to a stake
on a branch thence S 29° E 11 poles to
a black gum S 57½° E 41½ poles to a black
oak and black gum (not found) Cont
20 poles S 15¾° W 63¾ poles to a chestnut
and post oak S 74° E 169½ poles to
two black-oaks on the original south
line, and corner to said Lot F N^o 2
and with the lines thereof N 13½° W
417 poles to a cedar, white walnut & black
oak S 75° W 16½ poles to (B) a stake and
Willow pointers on the East bank of
said creek thence with creek as it
meanders N 36½° W 32 poles N 45° W 36 poles

N 6 E 21 poles N 50 E 17 poles thence leaving corner
 N 83 W 16 poles to a stake corner to Lot No 2 &
 Continuing with lines of same N 60 E 10 1/2 poles
 to a stake in a line and with same
 N 32 W 42 poles to a black walnut N 18 E W 36
 poles to a stake thence leaving corner
 S 63 W 8 poles N 24 W 12 poles to the be-
 ginning - 4.24 acres more or less
 Containing -

In making these various assign-
 ments the following rights of way are espe-
 cially demanded - Lots F, O. & K. must have
 and allow ways of egress and ingress one
 through the other, of sufficient convenience
 to haul out timber &c.

Also the lands of Lot No 1 must
 have a right of way for the same purposes
 through the lands of Lots No 2, to and
 from Lot L, No 1.

Respect. Submitted March 24th 1872

D. M. Carnical
 L. S. Ball
 L. D. Fulkerson
 Wm. R. Bowles } Com.

Bill of Cost

D. M. Carnical sur. Plat. Report &c	\$ 137. ⁰⁰ / ₁₀₀
L. D. Fulkerson 3 days @ \$2. ⁰⁰ / ₁₀₀	6. ⁰⁰ / ₁₀₀
M. S. Ball " " "	6. ⁰⁰ / ₁₀₀
W. R. Bowles 4 " " "	8. ⁰⁰ / ₁₀₀
Chairman &c	22.37
	\$179.37

Virginia Lee County 5 vol.

The foregoing report of division
and assignment is excepted to
Because Nora, James M. and Lila Colson
infant Children of M. E. Colson
have not been laid off and as-
signed their full equal share of
the lands of James M. Wheeler de-
ceased - And they refer to exceptions
filed by their father and next friend
W. G. Colson herewith submitted.

June 11th 1892

A. L. Prudenore atty for
infants by employment
from their father W. G. C.

J. M. Wheeler Jr. ^{no 2.}
vs $\frac{3}{3}$ Comers Report
of Partition
Q. R. Fresterson et al

Filed March 24
1892. J. A. Houghton

Comers Fee \$177.37

OFFICE OF

W. G. COLSON,

Attorney at Law.

EXAMINATION OF LAND TITLES
A SPECIALTY.

Middlesborough, Ky. June 4th 1892

Col. A. L. Pickens,

Dear Sir,

I find that I can
not be in Louisville on Monday next - as I expected
you can file formal exceptions to Commissioner's Re-
port.

I will give notice to take depositions Monday next.
If necessary advise me in regard to the mat-
ter at any time.

Address me at Gibson's Station, Va. -

In addition to the formal exceptions you can file
or attach the one (which I made out by me -
you can style the cause - above the exception -

Yours,

W. G. Colson.

328-
8.04
333.04

In the matter of the division of the estate
of J. M. Wheeler deceased.

The infants Nora, Jamie
M., Virgie^{and} & Lela Colson, by their father
H. E. Colson, command except to the report of
the Commissioners, herein:-

1st. Because said report has never been
subscribed by M. S. Ball, William Bolles,
or L. D. Fulkerson - Three of the Commissioners
appointed to make division of said land -
Respectfully submitted.

Nora Colson

James M. Colson

Virgie Colson

Lela Colson

by H. E. Colson.

W. G. Colson for

per $\frac{3}{2}$ Exempt

Whitaker & Keaton et al

Filed June 13th
1892

J. A. Whitaker

THIS DEED OF CONVEYANCE, Made and entered into
this 21st day of January 1888, between
Catharine Colson of Bell County of
the state of Kentucky

party of the first part and J. M. Wheeler

party of the second part, Witnesseth: that the said party of the first part, for and
in consideration of the sum of Two thousand dollars cash
and the further consideration of the accepf-
tion by the said J. M. Wheeler of purchase
money notes executed by said Catharine
Colson to W. G. Colson for the hereinafter de-
scribed property

do hereby sell and convey to the party of the second part, his heirs and
assigns, the following described property, to-wit: All the lands
hitherto conveyed by deed from W. G. Colson
to Catharine Colson for a more particular
description of which reference is hereby
made to all deeds and grants as evidence
of title to said land to said Colson
and reference is hereby made to meter
& bonds set forth in deed from said W. G.
Colson to said Catharine Colson. Same being
all the land conveyed by said W. G. Colson
to said Catharine Colson - 25 tracts
more or less including said Colson's house
& lot in Pineville, Ky., and all other
tracts as set forth in said deed

To have and to hold the same, together with all the appurtenances there-
unto belonging, unto the party of the second part, *his* heirs and
assigns forever. And the said party of the first part hereby covenants with the
said party of the second part, that *she* ^{speciall} will warrant the title to the
property hereby conveyed unto the said party of the second part and *his*
heirs and assigns forever.

A lien is retained upon the property hereby conveyed as security for the
payment of the said unpaid purchase money.

In testimony whereof, the party of the first part have hereunto subscribed
her name, the day and year aforesaid.

Katharine Colson

State of Kentucky,

Bell

COUNTY.

Clerk's Certificate of Acknowledgment.

I, *J. F. Slusher* Clerk of the County Court, for
the County and State aforesaid, certify that the foregoing Deed of Conveyance
from *Catharine Coleman*

to *J. M. Wheeler*
was on the *21st* day of *January* 18*88*, produced to me
in said County and acknowledged before me by *Catharine Coleman*

part *y* grantor thereto, to be *her* act and deed, and
~~desired that the same might be recorded as such.~~

~~the said~~

~~being of full age, and by me examined separate
and apart from said husband, and the contents and effects being
first fully made known to declared that did of
own free will and accord sign and seal, and as act and deed deliver
the same without any coercion or compulsion of said husband.~~

Given under my hand, this *21st* day of *January* 18*88*.

J. F. Slusher

Clerk.

By

R. A. Marsee

D. C.

State of Kentucky,

Bell

COUNTY.

Clerk's Certificate of Lodgment and Record.

I, *J. F. Slusher* Clerk of the County Court, for
the County and State aforesaid, certify that the foregoing Deed was this day
lodged for record, whereupon the same, with the foregoing and this Certificate
hath been duly recorded in my office.

Witness my hand, this *27th* day of *February* 18*90*.

J. F. Slusher

Clerk.

By

Wm. Hollingenroth

D. C.

State of Kentucky 3rd sec -
County of Bell

J. W. Davis, Clerk of The County
Court for The County and State aforesaid do
hereby certify that the foregoing is a true, com-
plete and correct copy of Deed from Catharine
Coleman to J. M. Wheeler as the same appears
of record in my office, in Deed Book 15 page
285.

Given under my hand this February 9th, 1895.

J. W. Davis Clerk
Bell County Court

comprised & subject
to "B & L"

Received May
17, 1895-

Catharine Coleman

Deed.

J. M. Wheeler

189

Acknowledged before me in due form, by

Lodged for Record

Recorded in Deed Book No. 15

Page 285 } Tax - \$ 50

Fee for Recording, - 1.25

Additional Certificate, - \$ 1.75

Additional Tract, -

THIS DEED OF CONVEYANCE, Made and entered into
 this ^{1st} day of January 1888, between
 Catharine Colson, of County of Bell and
 State of Kentucky

party of the ^{second} ~~first~~ part and W. G. Colson his wife Mag-
 gie Colson of same County & State

party of the ^{1st} ~~second~~ part, Witnesseth: that the said party of the first part, for and
 in consideration of the sum of One thousand dollars in
 hand paid and seventeen thousand dollars
 to be paid in the following manner $\frac{1}{2}$ in
 six months and $\frac{1}{2}$ - 12 months from date
 due by note

do hereby sell and convey to the party of the second part, her heirs and
 assigns, the following described property, to-wit: Twenty five tracts
 (25) of land situated in the County of Bell
 and State of Kentucky patented & deeded to
 and transferred to said W. G. Colson -
 550 acres in Highgate Creek of Bell Creek Grant
 ed to Shelton C. Partin (200) & Lee James; 200 -
 acres to Jerry M. Gibson; 135 acres to James M.
 Wheeler; $\frac{1}{2}$ of 200 ^{acres} to John Maree; to John Hoskins
 150 acres; Spencer King & Jeff Craig 50 acres;
 Abe Lock $\frac{1}{2}$ interest one $\frac{1}{2}$ being reserved in
 this deed & set apart for D. G. Colson; W. L.
 Peters 200 acres $\frac{1}{2}$ only; George Evans ²⁰⁰ $\frac{1}{2}$ only;
 Charley Lane ²⁰⁰ $\frac{1}{2}$ only; Nancy Evans 200 $\frac{1}{2}$ only;
 J. S. Smith 200; James R. Mason 50 acres; John
 J. Partin &c 100 acres; Martin Head 46 acres;
 James & Willie Johnson 100 acres; Alex Evans 50;
 M. D. K. Ely's heirs 300 acres; Joseph Nor 111 $\frac{1}{4}$ acres;
 J. N. Sampson 53 $\frac{3}{4}$ acres; Thomas Hoskins 155
 acres; an undivided interest held by me in Can-
 non Creek lands owned by my father at his
 death; a certain town lot in Pineville includ-

ing stin houses and residence together with all
the land therrunto belonging.

This deed is designed to embrace lands
owned by me at this date in ^{the} State of Kentucky,
County of Bell thux of every description
and nature whatsoever for a new partic-
ular description of which reference is made
to all evidences of title to land in my
favor & deeds &c. embracing lands not
previously sold by me.

To have and to hold the same, together with all the appurtenances there-
unto belonging, unto the party of the second part, *her* heirs and
assigns forever. And the said party of the first part hereby covenants with the
said party of the second part, that *he* will warrant the title to the
property hereby conveyed unto the said party of the second part and *her*
heirs and assigns forever.

~~A lien is retained upon the property hereby conveyed as security for the
payment of the said unpaid purchase money.~~

In testimony whereof, the party of the first part have hereunto subscribed
their names, the day and year aforesaid.

Witness:-

C. J. Hargis
W. J. Davis.

A. G. Colson.
M. S. Colson

State of Kentucky,

Clerk's Certificate of Acknowledgment.

COUNTY,

of Bell
I, J. F. Slusher Clerk of the County Court, for
the County and State aforesaid, certify that the foregoing Deed of Conveyance
from W. G. Colson his wife Maggie Colson

to Catharine Colson
was on the 28th day of December 1888, produced to me
in said County and acknowledged before me by W. G. Colson

part of grantor thereto, to be his act and deed, and
~~desired that the same might be recorded as such.~~

~~the said~~

~~being of full age, and by me examined separate
and apart from said husband, and the contents and effects being
first fully made known to declared that did of
own free will and accord sign and seal, and as act and deed deliver
the same without any coercion or compulsion of said husband.~~

Given under my hand, this 28th day of December 1888

J. F. Slusher Clerk.
By Wm. M. Hollingsworth D. C.

State of Kentucky,

Clerk's Certificate of Lodgment and Record.

COUNTY of

Bell
I, J. F. Slusher Clerk of the County Court, for
the County and State aforesaid, certify that the foregoing Deed was in 24th day
lodged for record, whereupon the same, with the foregoing and this Certificate
hath been duly recorded in my office.

Witness my hand, this 28th day of December 1888

J. F. Slusher Clerk.
By Wm. M. Hollingsworth D. C.

State of Kentucky }
County of Bell

I W. J. Davis Clerk of the County Court
for the County and State aforesaid do hereby certify that
the foregoing is true complete and correct copy of
deed from W. G. Colson and wife to Catharine Colson
as same appears of record in my office in
Deed Book No 7 Page 532.
Given under my hand this 9th Day of Feb'y 1895.
W. J. Davis Clerk
Bell County Court

Chapman 24 libit
Exhibit G. F.

H. G. Colson wife

Deed.

Catharine Colson

189

Acknowledged before me in due form, by

Lodged for Record Sept. 22nd 1888

Recorded in Deed Book No. 7

Page 532 } Tax - \$.50

Fee for Recording, - - - 1.25

Additional Certificate, - - -

Additional Tract, - - -

"Exhibited if"
file with W. G.
Colson's Deed.
H. A. W. Shaw
Special Comm

This Indenture, Made this January 8th
day of — 1891 between J M Wheeler
widower and — his wife of the
County of Lee State of Virginia parties
of the first part and H G Colson Trustee
of the County of Bell and state of
Kentucky of the Second Part:

Witnesseth; That the parties of the first part for and in consideration of the sum of Dollars—lawful money of the United States to them paid by the party of the second part the receipt whereof is hereby acknowledged, do herein and hereby grant bargain sell and convey to the said party of the second part his heirs assigns administrators and executors forever, the following described tract or tracts of land laying and being situated in the County of State of Kentucky on various waters and bounded as follows, viz: Same being all the land conveyed by W^c G Colson to Catharine Colson under deed dated January 1st 1888 and deeded by Catharine Colson to J M Wheeler under deed of date

Also all the land conveyed by deed from W^c G Colson to J M Wheeler under date of 1st day of September 1890 also at other times January 1st 1888 &

There is reserved from above said land the town lot in Pineville by occupied by H Y Colson formerly, and the Thomas Hoskins tract of land to each of which land I have this day given a quit claim deed to Pine Mountain Iron & Coal Co

Giving and granting said property to W S Colson in trust for the use and benefit of my said children Nora, James M. Virdie & Lela Colson.

Giving to said W S Colson Trustee for said children the power to sell any or all of said lands herein conveyed as he may think best on such terms of credit at such price as may seem to him reasonable

Giving and granting to said Colson Trustee herein the power to control use and manage sell and dispose of same or handle same in any way he may desire to re-invest the proceeds arising from the sale or rents of said lands as may seem best to said Colson.

Except the 1/2 Barton 200 acre tract & Ben Turner lands & Nor lands on Cannon Creek & town lots in Pineville deeded by Pine Mountain Iron & Coal Co to me - all of which is deeded to said Colson in fee simple.

x Also except J M Miller & J M Gibson

tracts on Highgate of Yellow Creek & Wm
Turner tract of land on Bears Fork of
Yellow Creek all of which is reserved
to me in payment of one thousand
dollar note & amount paid in by me
to D K Young on Hodson land in Va
And I hereby quit claim to said
Colson all lands heretofore conveyed
by him to anybody & confirm all
such sales & hereby release all my
claims to any of said lands together
with all the appurtenances thereunto
belonging in the way of liens or
otherwise

To Have and to Hold the aforesaid
tract or parcel of land with all and
singular the improvements and appur-
tenances together with all the privileges
and rights thereunto belonging or
in any wise appertaining to the party
of the second part his heirs, successors
and assigns for ever with covenant
of quit claim only.

In Testimony Whereof The said parties
of the first part have hereto set
their hands and seals the day and year
first above written

Attest:
Calvin Hill
Richard Risner

J M Wheeler Esq

State of Kentucky Bell County

I James S Bingham Clerk of Bell County Court + state aforesaid certify that the foregoing deed of conveyance from J M Wheeler to W Colson was on the 17th day of December 1891 produced to me in said county & proven by the oath of Richard Riser one of the subscribing witnesses thereto who also testified to the attestation of the other subscribing witnesses thereto - Calvin Hill.

Given under my hand this December 17th 1891

James S Bingham Clerk
By M M Buckley D C

State of Kentucky
County of Bell

I James S Bingham clerk of the County Court for the county and State aforesaid certify that the foregoing deed was this day lodged for record whereupon the same together with the foregoing certificate ~~and this certificate~~ has this day been duly recorded in my office

Given under my hand this 9th day of April 1894

James S Bingham, clerk.

State of Kentucky
County of Bell

I James S Bingham Clerk
of the County Court for the County and State aforesaid
certify that the foregoing four pages of written matter
is a full, complete and correct copy of the deed
from J. M. Wheeler to W. G. Colson Trustee,
(and of the certificates attached thereto) as the
same appears of record in my office in Deed
Book No 29 at pages 519 & 520

Witness my hand and seal of office this
9th day of April 1894

James S Bingham Clerk
Bell County, Court
By J. M. Carroll Deputy Clerk,

Exhibit B with annex
no 7.

"B"

1884	Cr. by check	485.80
	Saw for Willis	4.25
	" " Self	4.00
	Salt	\$12.78
	Two steer yearlings	28.80
Nov. 23.	Cr. by amount of check	38.90
1885	Amt due W. Gleason	30.00
May 12	amt due " " "	4.97
Oct 8	4 barrels of salt	14.30
28	29 1/2 bushels of wheat	23.60
	10 bushels " "	8.00
	1 male shoat.	3.00
Dec. 1st.	Cash	120.00
22	Paid (him) Wheeler	~~368.43~~
Jan. 3-'86	Bacon exchanged with Farn	3.35
	1 coat + overalls	3.40
Jan. 15, 1886	Cash in check	369.00
February	Cash in check	11.00
March 24	Cash in check	45.00
Apr. 1	Cash in " with Ford	5.00
May 14	1 pair of boots	52.30
28	Salt + cash	
Aug. 20.	1 pair of boots	
Nov. 22	1 " " "	
Dec.	1 " " "	
Jan. 87	Cash	100.00
8-87	Cheese	27.00
February 5-	Checks	200.00
	Feeding cattle	~~48.00~~
Feb. 19 87	=	95.00

Mar. 1 st '87	Amt. paid Hiram Hoskins	146.78
" "	Road claim	233.00
Mar. 7 th "	Cash in check	105.00
	5 pair of boots	22.50
	order to Matthew Furm	14.00
Mar. 12 "	Cash in check	400.00
Apr. 19 th "	Cash in check	400.00
Apr. 20 th "	From order	14.00
Apr. 26 th "	Cash in check	10.00
May 15 th "	Cash +	244.48
" "	Check amt. paid for heifer	14.00
	~~Check~~	~~375.00~~
Sept. 17 th '87	Checks	454.93
" 29 th '87	15 head of cattle 21.50 -	307.50
	Jack Turnercattle	
	Feed same from 29 th day of September '87	
	To March 31 st - 1888 -	
Nov. 12 th '87	Check	\$99.00
Jan. 10 th '88	4 steers	80.00
	1 Steer for G. B. Burchett	43.00
	1 Suit of clothes	16.50
Mar. 31 st '88	25 bushels of hard grass & freight \$2.00	{
	20 " timothy seed & freight \$6.50	
	7 sacks \$1.25	
Apr. 17 th '88	Cr. by 4 steers	70.00
	Cash in checks	67.00
	Amt. paid freight	14.75
	" " "	85-
July 7 th	1 pair of boots	4.50

Aug 3 rd 88.	1 yoke of oxen James & my cattle	\$92.50
31-	1 barrel of salt by wagner	2.00
Nov. 25-	1 Steer $\frac{1}{2}$	40.00
Jan 23-		
1889	Cash sent by Jim	52.00
28.	Cash " " Clint	20.52
	Corn to Rhinehart 246 bushels	284.50
	65 bushels of corn at 50-	\$32.50
	20 bushels of seed corn	\$12.00

Exhibit to filed with
W. G. Colson's report.
N. A. W. Shum
Special Comm.

8/1875

On or before the first day of July
next with interest from date we
or either of us promise to pay D. K.
Young & wife Elizabeth Young Eighteen
hundred & seventy six dollars being part
consideration of for the William Wood-
son home tract of land in Lee County
Va Sept 9th 1883-

W. Coleman

Seal

J. M. Wheeler

Seal

\$850.00 Paid \$832.67
 July 9th 1886 450.00
 for which Wheeler \$1282.67
 has receipt 1235.02
 \$47.65

This note was paid
 in checks and
 fruit bank which
 was collected by
 Mechanics Nat

BK. at Knoxville

Aug. 27th 1886

D. C. Young

H. /

Wheeler

\$1174.31
60.71
 \$1235.02

\$1875

On or before the first day of
July 1887 with interest from date we
or either of us promise to pay D. K.
Young & wife Elizabeth Young Eight-
teen hundred and seventy five dollars
being part consideration of for the
William Woodson home tract of land
in Lee County Va Sept 9th 1885

W. Woodson *(initials)*

J. M. Wheeler *(initials)*

\$2062.31

Received on this note
Two thousand & sixty two
dollars & thirty cents
in full of principal
& interest after de-
ducting \$17 & its
interest which amt.
was over paid
on note paid
August 27th 1886
This July 6th
1887
D. C. Young.

Interest July 6th 1887

205.31

Principal 1875.00

\$2080.31

18.00

2062.31

H. 2

\$1875.00

On or before the first day of July
1888 with interest from date or or
either of us promise to pay D.K.

Lynn & wife Elizabeth Lynn Eighteen
hundred & seventy five dollars being
a part consideration for the
William Woodson home tract of
land in Lee County Va Sept. 9th
1885-

W. G. Coleman (Seal)
J. M. Wheeler (Seal)

\$900

Received on the within
note Nine hundred dol-
lars for which I have
this day mailed to
J. M. Wheeler my
receipt bearing even
date with this credit.

H. 3-

This Oct. 9th 1887.

\$1257.70 Received on
the within note Twelve
hundred & fifty one dol-
lars & seventy cents in full
of bal. of print & interest
May 9th 1888.

\$1875-
6
1125-0
\$225-0
2
9.375-
\$234.375-
1875-00
2109.375-
900.000
\$1209.375-
48.37
1257.74

interest 7256
2
145-12
48.37

11111111
1887-10-9
9-9
1888-5-9
1885-9-9
2-8-0

8/875-

On or before the first day of July 1889 with interest from date we or either of us promise to pay S.K. Young ~~the~~ wife Elizabeth Young Eighteen hundred twenty five dollars being part consideration for the William Woodsen home tract of land in Lee County Va Sept. 9th 1885-

W Woodsen Seal

J. M. Wheeler Seal

\$326.45-

Received on the within
note Three hundred &
twenty six dollars &
forty five cents May 9th. 1888-

\$961.95-

Received on the within note nine hun-
dred & sixty one dollars & ninety five
cents Feb 5th 1889

\$425.60 Received on the within note four hundred &
twenty five dollars & sixty cents being amount
collected on note sent for collection less Com. of
5% Sept 30th 1889

\$333.00 Received on the within note Three hun-
dred & thirty three dollars from J. M. Wheel-
er Sept. 30th. 1889

\$325.00 Received on the within note
Three hundred & twenty five dollars -
This was paid in check on The Peoples
Bank of Yellow Creek Ky

H. H. Oct. 30th 1889 -

#1875-

On or before the first day of
July 1890 with interest from date we
or either of us promise to pay D. K. Young
& wife Elizabeth young Eighteen hun-
dred and seventy five dollars being bal. of
consideration & last payment of
the William Woodson home tract of
land in Lee County Sept. 9th. 1885-

W. E. Holson, 

J. M. Wheeler 

\$995-

Received on the
within note from
J. M. Wheeler nine
hundred & ninety
five dollars Sept.
30th. 1889

N. 5-

No. *47*

Stanford, Ky. *January 1st* 188*6*

First National Bank of Stanford, *on February 1st 1886*

Pay to *J. M. Wheeler* or Order,

Three hundred and sixty nine ⁰⁰/₁₀₀ *Dollars,*

\$ *369.90*

W. G. Carlson

\$369.90

ALL
NATIONAL BANK OF NEW YORK
THE IMPORTERS & TRADERS
FOR COLLECTION FOR ACCOUNT OF
ESQ. CASHIER OR ORDER

PAY

J. M. Wheeler

Hugh Parker

PAY TO THE ORDER OF
Importers & Traders Nat'l Bank.

Geo. J. Smith

"By habit 6" friend
as Mont. C. W. & Co. Boston's
wage. N. A. W. Shaw
Stewart Co. Conn.

W. G. Colson's Exhibits filed with
his deposition. ~~also~~ Re. a W. G. Colson
Special Comm.

J. M. Wheeler

vs { Chy

C. R. Huston & Co

Voucher of Admrs of J.M.
Whelan's Estate filed before
Commr. H.A.W. Dyer in the
Case of J.M. Whelan & Co. R.
Hesteron & Co.

H. A. W. SKEEN,
ATTORNEY-AT-LAW.

Law Offices—Skeen Building:

Big Stone Gap, Va., ... 189

1888 S. M. Colson Jr

Sept 5	68. Baconsias	2579	11/12	287.68
Sept 27	\$1. Baconsias	2306	12/1	276.72
				\$566.40
over paid John note in interest				13.00
Sept 18				\$579.40
"	paid John Miller			3.00
"	paid King	278	11/30	11.50
1888	paid Jim Bueh	1031		5.00
Jan 10	40 to 2000	210		4.00
Feb 15	hid cattle	1850		\$35-1.50
Feb 15	1 Long steer	43.00		43.00
Feb 15	pasture 19 hid cattle			
Mar 3	pasture 4, they			
Mar 15	34 Long & Maltese			10.83
Mar 15	1 suit case			16.50
Mar 17	for Bay 4 steers for			70.00
"	for 1 Bull	25.00		\$25.00
Mar 15	for Bay R.R. Receipt on hand			14.75
Mar 25	1400 to 119			154.00
Mar 27	for Bay 1 for Boots			4.50
Mar 28	1 for Boots			\$4.50
Aug 3	for Bay 1 make cattle	92.50		
	Sold Baker			
Aug 31	for Bay 1 Base, sett	2.00		
"	sent by Mrs Scott			
Nov 25	for Bay Peter sold	40.00		
1889	Long Long on			
Jan 25	for Bay cash	50.00		\$50.00
Feb 11	Harriet made by Jim			
Mar 10	to 10 to Bacon	11/29		\$5-8.00
1888	for interest in side			
Jan 28	for Bay cash	20.50		20.50
	paid by C. R. Kistner			
"	for over cost 1000 by Duke			\$10.00
"	for over from John Burnett			\$5-6.00
Mar 4	for cash 10.00 paid on			
"	for paid and other matters			\$10.00
"	for Bay 32 hid cattle for	333.00		
Mar 30	Bacon paid David			
	Young on David for cattle			\$333.00

1890 August 21st To 4 and $\frac{92}{100}$ acres of Land for
Depot-site at Wheeler Station
at \$75.⁰⁰ (seventy five dollars)
per Acre \$ 361.60

Virginia Lu Co To wit

Personally appeared before me
the undersigned Notary public.

Mrs L. M. Hobbs and made ^{oath} before me
that the above account is just and
unpaid and that there is no just-
offsets or credits against said account
Given under my hand

This Feby 18th day 1895

J. S. Gibson & P.

11

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This deed made and entered into
this 21st of Aug 1890 by and between
Mrs. L. M. Hobbs of the County of Lee
and State of Virginia party of the
first part and the Louisville and
Nashville Railroad Company a
Corporation doing business under
the laws of Virginia party of the
second part. Witness that in consid-
eration of the fact that said
Louisville and Nashville Railroad
Company erect and maintain a
depot on the lands of the said
party of the first part or on the
adjoining tract of land owned by
James M. Wheeler all situated
in Lee County Virginia and
the further consideration of the
sum of one dollar cash in hand
paid the receipt of which is hereby
acknowledged. The said party
of the first part has this day
given granted bargained sold
and by these presents doth give
grant bargain sell and convey
to the said Louisville and Nash-
ville Railroad Company its suc-
cessors and assigns the following

described strips, or ^{pieces} parcels of land,
First a strip of land 100 feet wide
along and adjoining the north
side of the strip of land hereto-
fore conveyed by the party of
the first part to the party of the
second part for right of way
for its Cumberland Valley branch
and bounded and described as
follows: Beginning at the East-
ern boundary line of the lands
of James M. Wheeler the same
being the western boundary line
of the lands of said party of
the first part. Thence along and
adjoining said Right of way strip
and on the north side thereof
and with a width of 100 feet for a
distance of 1400 feet. The second
of said strips lies on the south
side of said Right of way and
having a width of 50 feet and
bounded and described as
follows. Beginning at said Eastern
boundary line of said James M.
Wheeler land aforesaid thence
along and adjoining said

right-of-way strips on the
South Side thereof and with a
width of 50 feet - for a distance
of 1400 feet - Containing in the ag-
gregate $4\frac{8}{10}$ acres And said
party of the first part further
grants sells and conveys to the
party of the second part The
free use of any Spring or run of
water situated on his land
which it may require for water
tank and other purposes at
and around its depot with the
right to construct on said land
such catch basins or reservoirs
as may be necessary for collecting
water from said springs or
runs also the right to lay pipes
through said lands to said res-
ervoirs springs or runs of water
with the right of entry at all times
on said lands for the purpose
of laying examining and repair-
ing said pipes reservoirs or
basins. To have and to hold said
two strips or parcels of land with
the water and other privileges
herein granted to said party of the

second part to Successors and assigns forever. And said Party of the first part warrants generally the title to the two strips of land hereby herby conveyed together with the water and other Privileges herein granted. Witness the following Signature and seal this the day and date first above written

L. M. Hobbs Esq

Signed sealed and acknowledged in the presence of

B. T. Duncan,

R. E. O. Brion

C. B. Kestersun

Virginia Lee County to wit:

I John B. Gibson Clerk of the County Court in and for the County and State aforesaid do certify that B. T. Duncan and R. E. O. Brion this Day personally appeared before me in my County aforesaid and after being duly sworn deposed and said that L. M. Hobbs whose name is signed to the within deed bearing date August the 21st

1890, signed said deed in their
presence in the County aforesaid
acknowledged the same to be her
act and deed for the purposes
therein named on the day it
bears date and said deed is there
upon admitted to record.

Given under my hand this
September 1st 1890.

John R. Gibson Clerk
A copy - Leste. S. V. Richmond
Clerk

Hobbs L. M.

To Deed

L. N. R. R. Company

Recorded in Deed

Book No. 25.

Page 448.

S. W. Richmond
Clerk

@ \$90.00 paid
by Jeremiah W. W. W.

Judge Stein, Comr.

I find on examination that
heirs of Margaret Wheeler (late Colm) deceased
have received \$76.80
which amount is charged to them out of the es-
tate of J. M. Wheeler - dec. - & should be considered
by you as against them in your settlement.

On my own account I find that I paid
John Barnett \$93.90
on land which was deeded to J. M. Wheeler
Jr. for the benefit of J. M. Wheeler (dec's) heirs
which amount should be credited to my %
in your settlement.

I enclose decd as corrected by the County
Clerk of Bell Co., Ky.

Respectfully

W. G. Coleman.

May 15th 1895

1490

J. M. Wheeler Dr to Wheeler & Hill
Oct 4 to Nov 15 - To Cash which J. M. Wheeler
Received from said firm \$600.00
with interest from said dates.

J. M. Wheeler to J. B. Hill Dr
for 18 months wages for services per-
formed for said Wheeler in the
store for said firm during the years
of 1889, 1890 & 1891, at \$10.00 per month. \$180.00
with interest from January 1891.

Virginia Lumber Co. Va.

I H. A. W. Shum, Special Commissioner in the Chancery Cause of J. M. Wheeler against C. R. Westmore & Co, do certify that J. B. Still on the 19th day of July, 1896, made oath before me that the above accounts are correct, just and unpaid, and that said accounts are not subject to any off-sets or credits.

Given under my hand
This July 19, 1896

H. A. W. Shum
Special Commr.

Estate of J. M. Wheeler & (dec) Dr
 1891
 To J. M. Wheeler Jr. (as admr,
 To Making, Hauling & Putting up
 same 400 Rails 4.00
 Putting in Posts 6 days 2.00
 Cutting & Hauling Posts 5.00
 Pd for making 600 Rails 3.00
 Hauling 2 days to Sep 20 - 4.00
 Pd Freightage to Alex Brooks 2.00
 Pd James Ryans 2.27
 Hauling & Repairing ^{field for Hogs} fence around 5.00
 for fattening 5 Horses 10.00
 Pd Tom Walker ^{Co} for Shucking Corn 4.25
 Pd William West ^{than 2} for Assisting in Surveying 50
 Pd Burns on acct 2.50
 Hauling Corn to C. Co (5 Loads) 12.50
 Pd Charles Bailey for Making 200 Rails 1.25
 Paid John Barnett ^{Kentucky} for land in 12.50
 Paid Morrison & Druggs Co 2.50
 Pd for Repairing Fence 3.00
 Pd C. B. Johnson for Surveying ^{land} E. Chadwell 3.00
 Hauling rent Corn 25 days with 2 Teams ^{at 20¢ each} 5.00
 Pd feed till on Cattle J. B. Macklin 4.50
 Pd Mase Smith for Cutting Briars 20.00
 Pd Ruben Blalock Cutting Briars 25.00
 Pd James Norvell for Cutting Briars 15.00
 Pd Charles Bailey for Cutting Briars 5.00
 Pd David Smith Cutting Briars 10.00
 #202.27

Amt for Ward 20227
 Expenses paid to Ky to look after cattle E.B. Burek 25.00
 Paid Samuel Rowland for Bacon // 1.85
 (231.62) 239.62

Virginia ~~State~~ Lu Co. Va
 J. R. A. W. Shum, Special Com-
 missioner in the Chancery
 cause of J. M. Wheeler against
 E. R. Resurrection and do certify
 that J. M. Wheeler made
 oath before me that the
 above account against J. M.
 Wheeler is ~~correct~~ is just
 correct and due and
 there are no off-set
 or credits against same
 Given under my
 hand July 16, 1895
 J. R. A. W. Shum
Special Comm

James M. Wheeler }
vs } in Chancery,
C. R. Kuster and others }

For the doctrine of Hotchpot, see
NC § 2561.

It applies to the whole estate,
and cannot be applied to the personalty
or the realty only, where the estate
consists of both realty and personalty.

The intention of this doctrine and
bringing in advancements, is for
a just equalization among the
portions.

2 Min Inst, p 506,

~~The parties to the question~~

The suit for partition of the
real estate of James M. Wheeler
et al, was the proper suit in
which to settle question of advance-
ments, if any existed, among his
heirs. The failure to do so
in said suit, and said suit,
is a bar or res adjudicata to this
suit.

The parties in the two suits
are the same, as to identity
and quality. The subject matter was
before the Court, and the cause of
action before the Court.

See 78 Va. p. 529, ibid, 87 Va.
p. 447 et seq, and 85 Va. p. 47

1 These cases decide that res ad
2 judicata applies not only to matters
3 actually determined in a former
4 suit, but as to every matter
5 which the parties might litigate
6 in the cause, and which they
7 might have had decided.

8 Therefore, if this doctrine ~~ap-~~
9 thus applies to suits generally,
10 a fortiori does it apply to
11 the doctrine of Hatch et al. and
12 advancements, which are
13 here sought to be applied.
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State of Virginia

Lee County vij:—

We the undersigned hereby agree that
The following are the advancements made
by James M. Wheeler Sr. deceased - to
his only lawful heirs James M. Wheeler
Jr., Mollie E. Wheeler late Kesterson and Mar-
garet S. Wheeler late Colson - respectively to
James M. Wheeler Jr. Nothing
Mollie E. Kesterson as follows:—

Cash \$1,500

Brut of ^{physic} land now occupied by J. M. Wheeler Jr.
together with other lands of J. M. Wheeler Sr. dec.
for year 1889 — \$ 450

Same land &c. for year 1890 — \$ 450

Total \$2,400

Margaret S. Colson dec. by W. G. Colson - her husband
& Guardian - for her minor heirs as follows:—

J. M. Wheeler Sr. deceased paid into Wood-
son land — \$4,000

Also he, J. M. Wheeler Sr. dec. loaned or turned
over to W. G. Colson - One thousand dollars
for which a note was executed to said
Wheeler - a lien being retained on land
in Kentucky - To secure payment of said note

Also W. G. Colson conveyed ^{or caused to be conveyed} to J. M. Wheeler
Sr. deceased in consideration of above
amounts - certain lands in Kentucky

This agreement as to advancement is
subject to the conditions & statements
herin. & subject to the approval of
the Judge of the Superior Court -
each party hereto only verifying a
statement as to the accounts respectively
by opposite or under his or her name.

Given under our hands this
September 23rd. 1893 -

If necessary further evidence of
of above facts will be furnished if
required.

x Nollie Kesterson
x C. R. Kesterson
x H. Gledson Guardian
x J. M. Wheeler

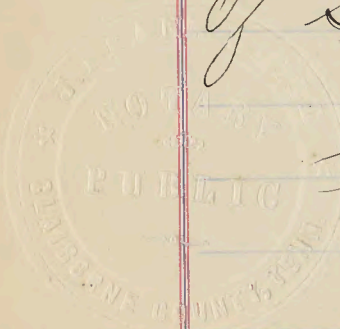
State of Tennessee } Personally appeared
Clairborne County } before me Francis
White an acting Notary Public
Iney Elected Commissioners &

Sworn for said County to K. Mallie
Kisterson W.G. Carlson & M.

Wheeler & made oath in the
face of Law that foregoing
Statements is true to the best
of their knowledge information
and belief Witness my hand
and official seal this the 23; day
of September 1893

J. Frank White

Notary Public



135.36

40.00

25.00

21.20

8221.56

34.42

2) 4.00

32
800

256.06

70.66

52.59

45.58248

12.00

0.01

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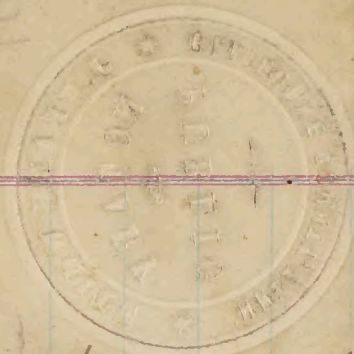
0.44

0.48

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5.542

23.582



Filed as part of the
deposition of C. R.
Kester reu. marked

"Agreement of Adjudgment"

N. A. W. Shinn

Special Counsel

858715

1 Exhibit with 185

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James M. Wheeler Jr Deft.
vs
C.R. Kesterson et al Deft. } In Chancery

W.G. Colson & Children, Exceptions to
Commissioner Allen's report filed in
a case styled same, on the 22nd day
of May 1895,

1st Because the finding of
said Commissioner on the question
of advancements to W.G. Colson
for Margaret Colson is contra
to the law and the evidence
in the case.

2nd Because said Commissioner
does not determine as to what
said amounts to W.G. Colson
& wife are technical advancements
& should be so treated in the
distribution of the personalty
of said Estate, and

3rd Because said Commissioner
fails to settle the personal
liability between said
Colson & said deceased,
This May 24th 1895,

B. H. Newell, atty for
exceptions,

J. M. Whelan, Jr.

vs.

C. R. Kesterson wife & others

J. M. Whelan, Jr. & C. R. Kesterson
Administrators of the estate of J. M. Whelan
deceased, and J. M. Whelan Jr
& Mollie Kesterson as heirs of J. M. Whelan
deceased. Except to that part of the
report of Commissioner Skene, which
allows the claim of Mrs. L. M. Hobbs
for \$241.⁰⁰

Reasons. 1st There is no evidence at all
that, there was any agreement or under-
taking upon the part of Mr Whelan to
pay Mrs Hobbs for land conveyed by
her to the Railroad Co. The deed exhibit-
ed in evidence, shows a direct convey-
ance, by Mrs. Hobbs, for a valuable consid-
eration, to the Railroad Co. And Mr Whelan
is not shown to have any interest whatev-
er, in said conveyance.

2. Said claim is barred by the statute
of limitations.

The Commissioner prop-
erly decides that he has no right under
the decree, which he was acting to carry
in this question or others of this kind.

Samuel Lyall Atty for Defendant

J. M. Wheeler for
vs B. E. Peterson,
C. R. Kesterson et al

Expositions of claims
and heirs of J. M. Wheeler
disclaim to allowance
of Mrs. Hobbs claim

Filed June 15th 1895.
J. B. Munsey Clk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *G. R. Kesterson Mollie Kesterson his wife Nora Bolson James Bolson, Verdie Bolson, & Lelia Bolson Infants and heirs at law of Margaret Bolson nee Margaret Wheeler deceased and W. G. Bolson*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *1st* Monday in *February*, 189*4*, to answer a bill in Chancery, exhibited against *them* in our said court by *J. M. Wheeler*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *22nd* day of *January* 189*4*, and in the *11 8th* year of the Commonwealth.

Copy Teste

A. B. Munsey

Clerk.

A. B. Munsey clerk

US.

}

SUBPÆNA
IN CHANCERY.

p. q.

To..... Rules,

Circuit Court.

I accept services
of the within sum-
mons. this Feb 5-1894.

C. R. Hesterson

Witness J. B. Hester.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *C R Kesterson, Mollie Kesterson*
his wife, Nora Colson, James Colson, Terdie Colson
+ Lelia Colson. Infants and heirs at law of Margaret
Colson nee Margaret Wheeler deceased and W. G. Colson
to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said
Court on the *1st* Monday in *February*, 189*4*, to answer a bill in Chancery,
exhibited against *them* in our said court by *J M Wheeler*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,
the *22nd* day of *January* 189*4*, and in the *11th* year of
the Commonwealth.

A Copy Teste

A B Munsey Clerk.

A B Munsey clerk

US.

{ SUBPŒNA
IN CHANCERY.

p. q.

To..... Rules,

Circuit Court.

I accept service of
the within summons
this Feb 5--/894.

Mollie Weston

Witness J. M. Weston

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *C. R. Kesterson and Mollie Kesterson his wife, Nora Bolson, James Bolson, Verdie Bolson & Lelia Bolson Infants and heirs at law of Margaret Bolson nee Margaret Wheeler deceased and W. G. Bolson* to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *1st* Monday in *January*, 189*4*, to answer a bill in Chancery, exhibited against *them* in our said court by *J. M. Wheeler*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *22nd* day of *January*, 189*4*, and in the *11* *8th* year of the Commonwealth.

A. B. Munsey Clerk.


J. M. Wheeler

US. { SUBPÆNA
IN CHANCERY.

Nora
Verda
Lula

L. R. Kesterson et al

Duncan & Hyatt p. q.

To 1st February Rules 1894

Circuit Court.

Executed by delivering
a true copy of the within
summons to Nora Colson,
James Colson, Verdie
Colson, Lelia Colson and
Wm. Colson, and by
getting L. R. Kesterson
and Nellie Kesterson to
accept service of the
within summons, see
their Acknowledgment on
back of summons, this
Feb 5-1894.

J. M. Weston Secy. for
C. E. Flanary S. L. C.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee—Greeting:

WE COMMAND YOU, That you summon

to appear before the Judge of our Circuit Court of the County of Lee. at the court-house thereof on the 6th
day of March 1899, to testify and the truth to say in behalf of the Defendant

in a certain matter of controversy in our said Court, before the said Judge depending and undetermined between

Julia C. Hamilton

Plaintiff. and

Frank Gray

Defendant.

And have then there this writ. Witness, A. B. MUNSEY. Clerk of our said Court, at the court-house, the 1st
day of March 1899, and in the 12th year of the Commonwealth.

A copy--Teste:

A. B. Munsey Clerk.

—XXXXXXXXXXXXXXXXXXXX—

Frank Gray

Ado } SUBPOENA
FOR
WITNESS.

Julia C Hamilton

—XXXXXXXXXXXXXXXXXXXX—

Circuit Court, the 6th day
of March 1899.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

We Command you to summon *Lee Gibson, Hiram Roberts, Latton Bailey, Charles Bailey, Smith Bailey, Jack Sutton, Robert Bryant, W. L. Gibson, Josh. Brink, C. G. Campbell, Eb. Thompson and G. W. Wheeler,*
to appear before the Judge of our Circuit Court of Lee County, at the court-house thereof on the

1st day of *March* 189*7*, to testify and the truth to say in behalf of the
Defendant

in a certain matter of controversy in our said Court,
before the said Judge depending and undetermined between

J. B. Hill Plaintiff
and

C. R. Kesterson admr. Defendant :

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-
house, the *8th* day of *February* 189*7*, and in the
12/1st year of the Commonwealth.

A. B. Munsey Clerk.

No witness that
any such letter,

Survivor of the money
says this money is
connected with the
transaction.

- Under the cir.
- circumstances of.
- this case he is.
- competent.

Says it is the legal
duty of the survivor
to settle up the
business.

Says, Kesterson
was examined as
a witness.

Says that he desires
an interest.

Jennings

C. R. Kesterson admr

Ado { SUBPENA
FOR
WITNESS.

J. B. Hill

Circuit Court, the

1st day of March

1897.

executed before me

26.57 all. Recd.

Eb. Huns

N. J. Jennings JS

Car. L. P. S. S. S. S.

J. B. Hill

Issue out of
Chancery when,

Having an interest
in it,

on account of
his commission,
a trustee cannot
take an acknowledgment

J. M. Wheeler
vs. E. L. Chis
W. L. Carlson et al -

